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THE CITIZEN ALWAYS COMES FIRST

LE PROTECTEUR DU CITOYEN

QUÉBEC OMBUDSMAN

Assemblée nationale

Québec

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Québec City, November 2001

Mr. Jean-Pierre Charbonneau
Speaker of the National Assembly
Hôtel du Parlement
Québec (Québec) G1A 1A4

Mr. Speaker:

I have the honour of presenting you with the 31st Annual Report of the Québec Ombudsman, entitled, "The Citizen always Comes First."

The values and the principles that have guided the action of the Québec Ombudsman since the founding of this institution shall continue to inspire me in my relations with the public administration. As such, I consider it of first-order importance to reaffirm the place that citizens must occupy in all the public services. Listening to needs, clear information and systems adapted to individuals are the qualities that I intend to promote within the institution that I direct and throughout the governmental administration.

Yours truly,

The Québec Ombudsman,

Pauline Champoux-Lesage

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QUÉBEC OMBUDSMAN

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The current logo of the Québec Ombudsman is a variation on the classic scales of justice, which symbolize the search for balance between competing rights. Normally, the scales represent justice as rendered by the courts and administrative tribunals.

The Québec Ombudsman's office is a nonjudicial conflict resolution mechanism that is generally more accessible than the courts. Not only must the Québec Ombudsman's decisions comply with the law, they must also be equitable. Equity is the ultimate level of justice.

On one level, then, the logo symbolizes the desire for justice represented by one of the pans of the scale. At another, the "P" replacing the other pan symbolizes the *Protecteur du citoyen*, the French term for Ombudsman. The "P" also refers to the highest level *(palier)* of justice-equity. Equity means applying the law with a human face.

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QUÉBEC OMBUDSMAN'S COMMENTS AND REFLECTIONS

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Having taken office on January 3, 2001, I do not consider this annual report to be the first report of my mandate, since it covers nine months of my predecessor's term. Nevertheless, I wish to take advantage of this privileged opportunity to account for the institution's activities over the course of the past year and to share with the members of the National Assembly—who have honored me with their trust—and with the public, my initial thoughts on the way in which I plan to fulfil my duties as well as on the values that I advocate.

Allow me first of all to salute the highly important contribution of my predecessor. For more than thirteen years, Mr. Daniel Jacoby chaired the institution of the Québec Ombudsman in an innovative manner. Many of his interventions have marked the history and the nature of relations between citizens and the public administration.

I point out, in particular, the values and the principles on which most of his recommendations have been based—principles which underlie the Ombudsman's actions and which he asserted in the *Social Contract*. Transparency, respect, accessibility and, reasonableness must guide the action of the public administration. The concern of Québec citizens in their rights to receive quality services from their public administration must guide, as a fundamental principle, all government action. I believe that the Québec Ombudsman can play a significant role in overseeing respect for this principle by ensuring that citizens dispose of recourse that is founded on respect for their rights and their dignity.

I take the opportunity of tabling my first report to recall the place that must be given to citizens and to define the way in which I plan to ensure their protection.

It may perhaps be useful to recall that the public administration exists by and for citizens. To ensure fair distribution of resources and services, the government intervenes in the area of the common good, where no one is better equipped to guide and make choices in the interests of the public welfare, to ensure the social and economic development of society as a whole, and this, in respect of the rights and freedoms of every person.

In a democratic state, the exercise of citizenship is at the core of political life: citizens elect their representatives to whom they entrust the care of governing. When citizens vote, they implicitly support values, they approve social projects, they trust the persons they have chosen and in return they expect to be respected, consulted, heard and treated with fairness and justice.

Government choices are carried out, implemented by public service staff—specialists who translate the decisions of the elected into programs, who write the laws and the regulations that must account for political commitments.

At this moment, as policies are developed or programs implemented, the Québec Ombudsman's vigilance is essential in speaking out on behalf of citizens, in order to ensure respect for the principles of justice and fairness, so that we do not lose sight of citizens' welfare. Administrative restrictions, but no less real, budgetary or conjunctural imperatives, and in particular, active lobbies constitute as many factors likely to affect the sought-after results. I therefore plan to exercise particular vigilance in terms of legislative and regulatory activity, building on the expertise developed by the institution: prevention remains the most effective method of counteracting interference with citizens and the deterioration of relations between the State and its citizens.

Moreover, the best programs and the best regulations are not exempt from difficulties of application, restrictive interpretations or mere administrative errors. In such cases, citizens will also be able to rely on my support in accompanying them in the search for just and fair solutions.

The privileged position that I enjoy provides me an exceptional observatory from which to draw lessons that can be utilized to the benefit of the greatest number of persons possible. Recall, for example, the Support Payment Collection Program, or more recently, the Connecting Families to the Internet program, in which the action of the Québec Ombudsman enabled families to benefit from the program as planned, despite administrative restrictions.

Such programs were designed by the government and implemented by responsible managers and competent public servants who committed to ensuring that they benefited the greatest possible number of citizens. Yet, as Québec Ombudsman, I receive complaints from citizens, and I note that decisions taken in good faith sometimes have unforeseen effects that must be remedied.

In May 2000, the National Assembly adopted and sanctioned the Public Administration Act. This law serves to affirm the priority placed by the public administration on quality of service for citizens. Furthermore, "it reaffirms the role played by parliamentarians with respect to governmental action and their contribution to the improvement of the services provided to the public by enhancing the accountability of The Administration to the National Assembly".[1]

1. *The Public Administration Act*, section 1, second paragraph.

This legislation—beyond requiring the departments and the agencies that make up the governmental administration to commit to parliamentarians by the public announcement, notably through a strategic plan and a service statement to citizens—enables the parliamentary commission of the National Assembly to discuss, during the hearing of a deputy minister or an agency director, "any other matter of an administrative nature...noted in a report... by the Public Protector."[2]

Thus and henceforth, the Québec Ombudsman as institution will dispose of a new forum in which to exercise its role as monitor of the governmental administration and to contribute to strengthening the Rule of Law and the democratic values that are the basis of relations between the State and its citizens.

Furthermore, in compliance with the requirements of this legislation, as well, I have developed with my colleagues a strategic plan and a Service Statement for citizens. In addition to a description of the mission as defined by the Public Protector Act, this plan contains the guidelines and the courses of action that I intend to highlight in accomplishing the mission over the course of coming years.

It seemed of the utmost importance to reaffirm my commitment to direct services for citizens. Therefore, I need to pursue efforts in both better identifying the needs of the public and in enhancing public knowledge of the institution that I direct. Finally, citizens who address me must be greeted and assisted with all the attention and the respect so required. Often the last recourse, the intervention of the Québec Ombudsman is a necessary counterweight for defending persons at grips with a complex, highly organized public service capable of defending its own positions.

Moreover, I believe that to secure sustainable results and to be a true agent of change, I must involve myself more in taking proactive steps. I therefore intend to seek improved concertation with the departments and the agencies in order to identify, with their co-operation, the means of preventing inequities and redressing injustices.

One way of improving the quality of services for citizens is to provide them with recourse to present their point of view. For this reason I plan to promote the development of complaints offices in the departments and agencies that dispense direct services to the public. In this way, the public administration will develop the reflex of listening to citizens and will clarify avenues for improvement for the benefit of the greatest possible number of people.

In the past, the interventions of the Québec Ombudsman have yielded highly positive results for citizens, because in large numbers of cases, the departments and

2. *The Public Administration Act*, section 29, third paragraph.

agencies greeted his recommendations favorably. I intend to make every effort so that the past safeguards the future by ensuring to clearly support my recommendations in such a way as to foster the adherence of departments and agencies. To do so, I will rely on the competence of my staff and on their commitment to treating citizens attentively and with respect.

The current activity report covers the period from April 1, 2000 through March 31, 2001. It contains a summary of the interventions conducted and examples of cases, arranger by department and agency, that were submitted to our attention.

In 2000–2001, 24,475 citizens and groups of citizens called upon the Québec Ombudsman, and 59 departments and agencies were called into question. The organizations that dispense direct services to the public are undoubtedly more often called to account.

However, I am more concerned by the rate of justified complaints. This year, citizens rightly turned to the Québec Ombudsman in 28.3% of cases. The main sources of difficulties causing harm are unreasonable waiting periods, unfair actions and inaccessibility of services.

It is my hope that this report reveals valuable lessons for the future.

2

GOVERNMENT DEPARTMENTS AND AGENCIES ADDRESSED IN THIS REPORT

2.1

DEPARTMENTS

2.1.1

LE MINISTÈRE DE L'AGRICULTURE, DES PÊCHERIES ET DE L'ALIMENTATION

LE MINISTÈRE DE L'AGRICULTURE, DES PÊCHERIES ET DE L'ALIMENTATION

The role of the ministère de l'Agriculture, des Pêcheries et de l'Alimentation is one of an economic nature. It is responsible for adopting and administering several programs aimed at supporting the production, processing and distribution of agricultural products, providing compensation to producers for exceptional damage (ice storm, animal disease, etc.) and reimbursing property taxes. Moreover, it exercises its duties as a controlling entity through an inspection system used for monitoring food production, processing, distribution and sale sites, and by issuing various types of permits.

The Québec Ombudsman receives a wide variety of complaints about this department, most likely because of the extensive range of services it offers.

The Department unjustifiably revokes a restaurant permit without notifying the permit holders.

In December 1999, the Department granted three associates a restaurant operating licence valid for twelve months. The following month, one of the associates decided to withdraw from the business and the two remaining associates informed the Department of the situation. The Department deemed that the legal entity of the business would be affected by the partner's withdrawal. Moreover, given that holding a permit is a right granted to individuals and not to businesses, the Department no longer considered the permit to be valid. It therefore revoked the permit without notifying the two associates. During a routine inspection, a Department inspector noted that the restaurant had been operating without a valid licence. He therefore asked the two associates to immediately renew their licence and informed them that, should they fail to comply with this request, they would be issued a violation notice and be subject to a fine.

Dissatisfied, the restaurant owners asked the Québec Ombudsman to look into the situation. The investigation revealed that the Department had failed to notify them of its decision to revoke their licence, as the law[1] states they should have done. According to the Québec Ombudsman, the change in management did not affect the legal entity of the company and the resignation of their associate did not dissolve the business. Furthermore, the Québec Ombudsman concluded that the Department was unjustified in requiring the associates to obtain a new licence. It asked the ministère de l'Agriculture, de Pêcheries et de l'Alimentation to refrain from sending out a violation notice and reconsider the legality of its decision.

Procedure modified to avoid similar errors in the future

The Department accepted the Québec Ombudsman's point of view and maintained the validity of the licence. It also modified its procedure to prevent similar errors in the future.

1. *The Agricultural Products, Marine Products and Food Act*, R.S.Q., c. P-29A.

2.1.2

LE MINISTÈRE DE L'ÉDUCATION

LE MINISTÈRE DE L'ÉDUCATION

An Act respecting the ministère de l'Éducation confers responsibility upon the Minister of Education for promoting education; contributing, by promotion, development and support in those fields, to raising the level of scientific, cultural and professional achievement for the population of Québec and its individual members; furthering access to the higher forms of learning and culture for any person who wishes to have access thereto and has the necessary ability; contributing to the harmonization of the orientations and activities of his department with general government policy and with economic, social and cultural needs.[1]

The ministère de l'Éducation is also responsible for promoting access to education for less affluent persons by granting them financial assistance in accordance with the *Loans and Bursaries Program*.

School transportation safety continues to be a matter of concern for parents and for the Québec Ombudsman.

In 1995, the Québec Ombudsman formulated several recommendations targeting school transportation safety.[2] Since then it has regularly received numerous complaints concerning this problem. Parents have thus called upon the Québec Ombudsman to denounce situations that they feel to be dangerous, such as the refusal of school boards to provide school transportation in dangerous areas, shortcomings in school zone safety and the problem of children crossing the street in front of school buses.

In the 1999–2000 Annual Report, the Québec Ombudsman mentioned that he had reminded the Education Minister of the importance of considering students' safety as an essential criterion in school transportation management. He also asked the Minister to exercise a leadership role in this matter and to impose safety standards on all school boards. At the time, the Minister had informed the Québec Ombudsman that this issue would be considered during the development of a framework policy to be implemented in September 2001.

The Québec Ombudsman was disappointed to learn that the adoption of the framework policy has been postponed. Only a few minor changes to re-adjust the funding regulations are planned for the beginning of the 2001–2002 school year. The Québec Ombudsman therefore intends to continue to exercise vigilance so that the ministère de l'Éducation's student transportation policy, currently in

1. *An Act respecting the ministère de l'Éducation*, R.S.Q., c. M-15, section 1.2.
2. THE QUÉBEC OMBUDSMAN, *Les enfants d'abord : rapport sur la sécurité du transport scolaire*, Québec, December 1995.

preparation, take into consideration the highly legitimate concerns of parents over the safety of their children.

[illegible] status and increased fees for [illegible] who are not Québec residents: [illegible] persist.

Students who are not Québec residents and who are admitted to education institutions, must pay higher tuition fees than Québec residents. These fees, however, are lower than those required of non-Canadian students. The Québec Ombudsman addressed this problem in its last two annual reports. During the last year, it received further complaints resulting from the application of the regulations that define eligibility for resident status.

Discussions continued with the ministère de l'Éducation, on problems concerning the interpretation of regulations and the application of the fee increase policy for which the Québec Ombudsman has not received a satisfactory response. Such problems include: students possessing dual Canadian and French citizenship and others; the need to put in place an exemption or individual case assessment committee; the situation of immigrants who arrived in Québec before 1978 and who do not hold a Québec Selection Certificate.

As the ministère de l'Éducation had announced, it harmonized the regulations between Student Financial Assistance and the various education levels, and introduced relaxed regulations concerning persons who are absent from Québec for a maximum period of two years. In addition, it recognized Québec resident status for students possessing dual Canadian and French citizenship, on the condition that they do not live in another province at the time of their admission to an education institution.

The Québec Ombudsman continues to intervene in the other matters brought to the attention of the Department in order to find reasonable solutions.

STUDENT FINANCIAL ASSISTANCE

To democratize access to higher education, in the early 1960s, the Government of Québec created the *Loans and Bursaries Program*. Today, the program is managed by an autonomous services unit within the ministère de l'Éducation. The goal of the program is to allow less affluent persons access to higher education and vocational

secondary programs, and thereby affirm the right of citizens to equality of opportunity. This administrative unit is known as Student Financial Assistance.

The program is auxiliary in nature, and it is based on the principle that students are primarily responsible for the costs related to their studies. In this way, when students, or where relevant, their spouses or parents, lack adequate resources, the government pays out assistance in the form of loans or bursaries to cover basic needs for one year of study.

An important intervention by the Québec Ombudsman … a brief presented to the Commission sur l'administration … exposes four major problems observed with Student Financial …

On November 2, 2000, within the framework of An Act respecting the accountability of deputy ministers and chief executive officers of public bodies[3], the autonomous services unit was heard for the first time by the Commission sur l'administration publique, in order to account for its administrative management.

Since the Public Administration Act[4] calls on members of the Commission to take into account the comments of the Auditor General and those of the Québec Ombudsman, the latter prepared a brief addressed to the Commission and to MNAs in which he exposed four major problems, namely:

1. inadequate procedures arising from the verification of revenue with the ministère du Revenu,
2. inflexible procedures for collecting outstanding sums,
3. Student Financial Assistance's lack of accountability with respect to its errors and
4. lack of credible means of recourse available to students.

The Québec Ombudsman's comments were well received by the MNAs and by the autonomous services unit. Measures have already been put in place to rectify a number of the situations that were denounced, but other issues remain to be acted upon.

Québec Ombudsman's … well received

The principal issues addressed in the Québec Ombudsman's brief and the solutions that have been or remain to be secured are explained below.

3. *An Act respecting the accountability of deputy ministers and chief executive officers of public bodies*, R.S.Q., c.1-4.1.
4. *Public Administration Act*, L.Q. 2000, c.8, section 29. This section came into force on October 1, 2000.

...arising from the verification of the student's ... with the ministère du Revenu du Québec.

Since 1993, to verify the accuracy of income declared by students, Student Financial Assistance has compared this declaration with income indicated in the student's income tax return filed with the ministère du Revenu du Québec. This procedure caused a number of problems, the main one arising from the fact that following such verification, the only adjustments implemented were those that benefited Student Financial Assistance. In fact, when Student Financial Assistance discovered that the income declared to the ministère du Revenu du Québec was higher than that declared by a student for the purposes of calculating assistance, it would decide that it had paid out excessive sums to the student and would automatically proceed to claim repayment. Inversely, when it observed that a student had earned less money than the amount declared for the purposes of calculating assistance and that as a result, the student would be entitled to receive additional assistance, no action would be taken.

Moreover, the Québec Ombudsman pointed out that the autonomous services unit was not checking with students to determine the reasons for inconsistencies between income declarations. Assistance was then automatically suspended for most students. Finally, the information contained in the repayment claim was clearly inadequate. Students were unable to understand the claim and could therefore not explain the noted inconsistency between declared incomes.

In the summer of 1998, the Québec Ombudsman submitted this problem to the Education Minister, but without success. In the summer of 2000, nothing had yet been rectified. Following the Commission hearings, Student Financial Assistance finally began, in the year 2000–2001 to inform students of observed inconsistencies between declared incomes, whether positive or negative. In the meantime, the payment of financial assistance would no longer be interrupted, and students would be accorded a period of 30 days to provide explanations. In light of the information provided, the autonomous services unit would then award additional assistance to students or, in the case of overpayment, students would be required to negotiate an agreement on repayment conditions. If students fail to undertake an agreement, assistance would be suspended.

The issue of rectifying cases for previous years remains to be addressed and will be the subject of later discussions with the Student Financial Assistance officials.

The inflexibility of procedures for the collection of outstanding sums from students may have harmful consequences for them. Since student debt load is on the rise, the

Québec Ombudsman recommended a relaxation of the regulations governing the repayment of student debt. His report explained two types of situations in particular that had come to his attention.

Section 43 of An Act respecting financial assistance for education expenses[5] stipulates that a person is excluded from the program for as long as he or she has not repaid a previous debt or reached a repayment agreement. Since 1997, a regulation has required students to repay 50% of their debt before regaining eligibility for the program.

Although the Québec Ombudsman does not consider this regulation to be inherently unreasonable, it has requested that special circumstances be taken into consideration, specifically those involving persons experiencing insecure financial circumstances or receiving social assistance benefits before they resume their education.

Even though Student Financial Assistance has shown openness toward relaxing the regulation in certain specific situations, the Québec Ombudsman has observed that a number of cases deserved greater attention and flexibility. It has therefore recalled the need to provide for exceptional situations, which the Department has agreed to do.

The Québec Ombudsman then requested that the student guide to application for financial assistance application include information indicating that students are not eligible for the program until they have repaid 50% of their debt. In fact, the complaints that it received showed that students had only been informed of this regulation after having resumed their studies—in other words, after they had already left a job, moved, undertaken a number of expenses for school materials, etc. The Department welcomed this request: the information is now included in the 2001–2002 student guide to application for financial assistance.

The Québec Ombudsman denounces the insufficient time period allotted for compulsory repayment that is required of students while they are still registered, and which sometimes forces them to abandon their studies.

The Québec Ombudsman also described the problems experienced by students who must repay an overpayment paid out the previous year during the course of their studies. The students must pay this sum directly from the financial assistance granted for the current year. When the amount owed is less than $2,000, the student must pay it back within one year; when it is $2,000 or more, the student is allowed a period of two years. The Québec Ombudsman pointed out that students who receive financial assistance scarcely have the resources to provide for their basic needs and cover the

5. *An Act respecting financial assistance for education expenses*, R.S.Q., c. A-13.3.

costs of their education. Requiring them to repay amounts in such a short period of time sometimes forces them to abandon their studies. The following case well illustrates two problems related to collection.

A single-parent female student with three dependent children undertook university studies in the summer and fall trimesters. The following winter, after detecting an error in the woman's file, the autonomous services unit carried out a new calculation and demanded her to repay an amount of $2,400, $1,200 of which was to be repaid immediately.

Student Financial Assistance would hold back this sum directly from the financial assistance to which she was entitled if she continued her studies the following fall. It was impossible for the student to provide for her basic needs with such a significant cut to her assistance. The Québec Ombudsman intervened in vain. The autonomous services unit maintained its inflexible position. The student was therefore forced to abandon her studies in the fall, even though she only had a few courses and a work placement to complete in order to obtain her B.A. degree.

The Québec Ombudsman therefore recommended in its brief that Student Financial Assistance's repayment terms be modeled on those established by the ministère de la Solidarité sociale, which allow for the extension of the repayment schedule, taking into account the individual's ability to pay. The Québec Ombudsman is awaiting a response on this matter from ministère de l'Éducation officials.

[illegible] on the part of Student Financial Assistance [illegible] students unjustly penalized.

When financial assistance is calculated, mistakes may occur and students are sometimes paid an amount to which they would not normally be entitled. The unit then asks the student to repay the overpayment. If the student is responsible for the mistake, then he or she is responsible for repaying the requested amount. However, when Student Financial Assistance alone is responsible for the mistake, and the student could not reasonably discover it, the Québec Ombudsman is of the opinion that it should accept the consequences rather than penalize the student.

Several students complained to the Québec Ombudsman, contesting having to assume responsibility for such errors. During previous interventions, the Québec Ombudsman brought a number of cases to the attention of the Minister and asked that the demands for repayment generated by administrative errors be withdrawn. The only concession obtained was the non-collection of interest payments for one year for repayment requests of less than $2,000, and two years for other cases. The Québec Ombudsman deemed this measure to be inadequate.

The Québec Ombudsman therefore took up the matter again, and pointed out in his brief to the parliamentary commission that students are among the few citizens required to assume responsibility for the government's mistakes. In fact, *An Act respecting income security*, An Act respecting the Québec Pension Plan, An Act respecting the Government and Public Employees Retirement Plan and An Act respecting family benefits[6] provide for the repeal of claims resulting from administrative errors when they are not easily detectable by citizens.

The Québec Ombudsman recommended that similar treatment be accorded to students, namely, that repayment requests of this nature be withdrawn, so as not to hold them responsible for administrative errors. He also requested that Student Financial Assistance be equally accountable for the decisions and the oversights of its representatives, namely those responsible for financial assistance in educational institutions, since they are trained and mandated by the unit staff.

Student Financial Assistance stated that it accepts the principle of accountability and the responsibility of its organization and has committed to bring the Québec Ombudsman's recommendation to the attention of the Minister in order to proceed with an amendment to An Act respecting financial assistance for education expenses. Bill No. 12 was introduced to the National Assembly on May 15, 2001 and An Act to again amend the Act respecting financial assistance, assented to June 21, 2001.

According to the Québec Ombudsman, all recourse available to students must be accessible, credible and effective.

For several years, the Québec Ombudsman called for the implementation of measures of recourse that are accessible, credible and effective. Impartiality and autonomy are essential criteria for ensuring credibility and effectiveness. Not only must justice be done, justice must also appear to be done.

The Québec Ombudsman's comments made to the Commission related to three measures of recourse currently available to students: the Review Bureau, the Examination Committee for Exceptional Cases and the Complaints Bureau.

The Review Bureau: the Québec Ombudsman feels that it was not providing the guarantees required to uphold a genuine right of review

The Québec Ombudsman called the attention of MNAs to the fact that the Review Bureau does not operate under independent or autonomous conditions—two conditions that should guarantee its impartiality—since it is answerable to the

6. *An Act respecting income security*, R.S.Q.,c.S-3.1.1;
An Act respecting the Québec Pension Plan, R.S.Q., c. R-9;
An Act respecting the Government and Public Employees. Retirement Plan, R.S.Q., c. R-10;
An Act respecting family benefits, R.S.Q., c. P-19.1.

director of the autonomous services unit and since the person in charge of said bureau, although designated by the Minister, does not have decision-making powers. Basically, the Québec Ombudsman indicated to the parliamentarians that, by operating in the isolation of the administrative unit without decision-making powers, the Review Bureau was not providing the guarantees required to uphold the exercise of the right to review.

Improv[illegible] procedure [illegible]

To remedy these shortcomings, the Department recommended that the person designated be henceforth placed under the authority of the Deputy Minister. In this way, following a review of the file, the designated person would render a decision. In cases where Student Financial Assistance rejects this decision, the Deputy Minister would be notified and following a further review, would make the final decision. Although the proposed solution does not grant complete autonomy to the person responsible for the review, it is acceptable to the Québec Ombudsman. The process involving analysis of the request and decision-making will take place outside the administrative unit that made the initial decision—this fulfils the condition required for impartiality of the process.

[illegible] delays on the part of the Examination Committee for [illegible] Québec Ombudsman recommends reducing this [illegible] of 45 days.

The Québec Ombudsman acknowledges that the Examination Committee for Exceptional Cases, under the jurisdiction of the Education Minister, is a credible, independent and impartial means of recourse. It has observed, however, that the time required for processing such cases may sometimes be as long as several months. This is an unacceptable situation because, by definition, the pursuit of studies must necessarily already be compromised when the student requests this special recourse. In fact, there are two sources of delays: delays in preparing cases before they are submitted to the Committee and delays originating within the Committee itself. The Québec Ombudsman recommended that measures be taken to reduce the delays inherent in the entire process to 45 days. Student Financial Assistance committed to reviewing its mode of operations so as to reduce delays and to inform the members of the Examination Committee of the Québec Ombudsman's recommendation.

The Complaints Bureau does not [illegible] means of recourse: the Québec [illegible] bureau be pegged to the Deputy [illegible].

The Québec Ombudsman pointed out that the Complaints Bureau did not constitute independent and credible recourse, since it comes under the immediate authority of the Unit Director, the person in charge cannot advance recommendations and his or her role is limited to transmitting the complaints received to the administrative units concerned.

The Québec Ombudsman is of the opinion that for reasons of moral authority and effectiveness, this bureau should be directly answerable to that of the Deputy Minister. Furthermore, this bureau should process all complaints concerning the ministère de l'Éducation.

All agree that improved co-operation between [illegible] Assistance officials and the Québec [illegible] to be essential.

Following the Commission hearings and a meeting between the Québec Ombudsman and department officials, it has been acknowledged that improved co-operation between the autonomous services unit authorities and the Québec Ombudsman would prove to be necessary. The office of the Québec Ombudsman is satisfied with this observation. It hopes that such co-operation will make it possible to solve several problems at source, in such a way as to ensure better services for students, and consequently, to attain the objectives set by An Act respecting financial assistance for education expenses.[7]

7. op. cit., note 5.

2.1.3

LE MINISTÈRE DE L'EMPLOI ET DE LA SOLIDARITÉ SOCIALE

LE MINISTÈRE DE L'EMPLOI ET DE LA SOLIDARITÉ SOCIALE

The mission of the ministère de l'Emploi et de la Solidarité sociale[1] is to fight social exclusion and poverty by providing financial assistance to persons whose financial resources are inadequate to provide for their needs. Various measures are used to help citizens enter or remain in the job market.

The March 2001 naming of a minister responsible for the fight against poverty attests to the Government of Québec's resolve to combat poverty and exclusion—issues that, according to the Premier of Québec, should require our genuine, unflagging concern, given that "it is unacceptable for an advanced society to have a significant number of young families and young children living in poverty."[2]

2,621 requests for intervention

Over the course of the year 2000–2001, the Québec Ombudsman received 2,621 requests for intervention compared to 3,812 the previous year. This difference is largely the result of a drop in the number of employment-assistance recipients over the last few years. In the last five years, 236,249 recipients—or 29% of overall recipients—withdrew from employment-assistance programs. In 2000-2001, 42,000 people no longer required financial assistance.

The end of the Emploi-Québec crisis also contributed to the decrease in reques. for the Québec Ombudsman's intervention. In 1999–2000, this sector generated 716 requests compared to 209 in 2000–2001, a difference of 507 requests.

In contrast to previous years, no major modifications were made to the act and the regulation, thereby decreasing the risk of potential difficulties.

A number of problems came to the Québec Ombudsman's attention over the last year.

It is unreasonable to restrictively apply a 30-day deadline for payment requests when the Department requires proof that the request was first rejected by the Régie des rentes.

At the time of a citizen's death, his sole source of income was the Canada Old Age Security Pension. His daughter requested death benefits from the Régie des rentes to cover the burial costs incurred by the family. The Régie refused to pay out the benefits since the woman's father had not adequately contributed to the pension plan. She was then referred to the Centre local d'emploi.

1. The ministère de la Solidarité sociale was replaced by the ministère de l'Emploi et de la Solidarité sociale by Order in Council 221-2001, March 8, 2001 [2001, G.O. 2, 1789].
2. Bernard LANDRY, *"Un gouvernement de la solidarité"*, Le Soleil, Québec, March 23, 2001, p. A-15.

The Regulation respecting income support[3] allows for a $2,500 reimbursement for funeral expenses paid for by the family in cases where the deceased had no resources, even if the latter was not an employment-assistance recipient. However, in this particular case, the agent at the Centre local d'emploi refused to pay out the amount claimed because the request had not been filed before the deadline provided for in the regulation—no later than 30 days following the date on which the expenses were incurred—and because the citizen was unable to prove her inability to file a request within the allotted time. Faced with the refusal, the woman asked the Québec Ombudsman to look into the matter.

$2,500 paid to the claimant

The investigation revealed that the ministère de l'Emploi et de la Solidarité sociale requires that requests for death benefits first be sent to the Régie des rentes. If the Régie refuses to pay out the benefits, the Department can then authorize payment for funeral expenses. Furthermore, the investigation showed that the citizen was late in filing her request because she was waiting for an answer from the Régie des rentes.

As far as the Québec Ombudsman was concerned, citizens should not be penalized because of the time it takes the Régie des rentes to process their request. It therefore asked that the ministère de l'Emploi et de la Solidarité sociale modify its procedure and accept requests from individuals who have filed an initial request for payment of funeral expenses with the Régie des rentes, without taking this time limit into consideration.

The Department accepted the Québec Ombudsman's point of view. As a result, the citizen received the $2,500 claimed, and in the future, countless others will benefit from the changes brought to the Department's procedure.

[illegible] experience difficulty in meeting their basic needs. [illegible] therefore proposes that a progressive [illegible] be applied.

An Act respecting income support, employment assistance and social solidarity[4] anticipates that the penalty provided for in the regulation can be imposed upon a recipient, should the latter refuse to comply with the guidelines established by an agent in order to re-enter the job market. The Québec Ombudsman, however, feels that since recipients experience difficulty meeting their basic needs, any reduction in their benefits must be applied in a reasonable manner.

3. *The Regulation respecting income support*, Order in Council 1011-99, September 1, 1999 [1999, G.O. 2, 4083].
4. *An Act respecting income support, employment assistance and social solidarity*, L.Q. 1998, c. 36, sections 45, 47, 55.

In the comments it submitted to the Minister of Social Solidarity in July 1999, following publication of the Draft Regulation respecting income support[5], the Québec Ombudsman proposed that the penalty—which, at the time, was $150 for a twelve-month period, for each of the recipient's offences, and a maximum of $300 per month—be abolished. Should the Department be unable to abolish the penalty entirely, the Québec Ombudsman recommended that it be applied progressively and that the recipient's case be reviewed periodically.

The Department welcomed the Québec Ombudsman's proposal and, in July 2000, amendments to sections 152 and 153 of the regulation[6] came into effect, somewhat alleviating the consequences of the penalty. Based on these new rules, the penalty must be applied gradually—a reduction of $75 per month for the first offence, $75 for the second and $150 for the third, with a maximum reduction of $300 per month in the case of a single person without dependants and $150 for a single-parent family. In addition, the Department has implemented a procedure to ensure that recipients have been given every opportunity to meet their obligations before their benefits are reduced.

Applying an internal guideline distances the Department from its objective of supporting recipients who wish to resume their

A citizen who was taking a training course offered by Emploi-Québec in order to obtain her high-school diploma received an allowance from Emploi-Québec to help her pursue her studies. When the woman learned she needed to be hospitalized for a period of four to five days, she informed her agent who confirmed that the situation would not cause any problems. Following her hospital stay, the woman's doctor suggested that she take two weeks off. At that point, she forwarded a medical report to her agent who informed her, a few days later, that her allowance would be terminated and that she would have to reimburse the money she received during her two weeks of absence. Feeling that she had been unjustly penalized, the woman asked for the Québec Ombudsman's help.

During the investigation, the Québec Ombudsman learned that, according to an internal guideline, the agent had the right to interrupt allowance payments after five days of absence. The Québec Ombudsman, however, felt that by being too restrictive in its application of this guideline, the Department was distancing itself from its objective—that of supporting recipients who wish to resume their education. The Department should exercise some flexibility and take special circumstances into consideration. The Québec Ombudsman proposed that the Department review its guideline and continue to pay out allowances to individuals who are absent from

5. *Draft Regulation respecting income support*, 1999, G.O. 2, 2021.
6. *The Regulation to amend the Regulation respecting income support*, Order in Council 637-2000, May 24, 2000 [2000, G.O. 2, 3327].

their training courses for two weeks when this absence is justified and when it does not compromise successful completion of the course.

The Department accepted the Québec Ombudsman's proposal and, as a result, this citizen, and many others in the same situation will certainly benefit from this new approach.

A citizen is unjustly penalized for an error she did not commit.

In a monthly form which all employment-assistance recipients are required to forward to their agent, a citizen entered the date on which she started her new job and the name of her new employer. After verifying the information, the agent informed the woman that her benefits would be reduced by $175, in accordance with the law. The following month, the citizen informed the agent that she lost her job because her employer no longer required her services. Even though it had been notified, the Department continued to reduce the citizen's benefits for several months. When an agent finally noticed that a mistake had been made, the Department offered to pay the woman back an amount equal to three months of benefit reductions. Dissatisfied, the citizen asked the Québec Ombudsman to make sure that the amount was fair.

An error is corrected and $1,050 is reimbursed

The investigation revealed that the citizen had in fact declared the termination of employment to her agent and that, month after month, in good faith, was hoping that her benefits would be adjusted. As for the Department, it acknowledged that, even though it could pay out the unpaid allowance retroactively due to an error committed by one of its agents, it had decided to reimburse the recipient only for the previous three months. It pointed out that the recipient had 90 days to contest the agent's ill-founded decision and that nothing had prevented her from doing so.

Noting the woman's distress, the Québec Ombudsman asked the Department to reimburse her for the complete amount since she should not have been penalized for an error she did not commit. The woman was paid the amount of $1,050.

The Québec Ombudsman's intervention led to the clarification of a citizen's [illegible] and the reimbursement of seized amounts.

A young man had been receiving employment insurance benefits since September 1995. One day, he received a $23,000 claim from the ministère de l'Emploi et de la Solidarité sociale. The Department stated that the man had forgotten to declare that he was co-owner of a building valued at $154,000—a fact which rendered him ineligible for employment insurance benefits. The man's father then informed the

Department of the fact that the building did not belong to his son and that, as such, it did not provide him with any income. The Québec Ombudsman was called upon to intervene in the matter.

It was discovered that the young man had inherited part of the building in 1990. The testator had specified that the young man would only officially become the owner of the building at the age of 21 and that his father had been chosen to manage the estate. As such, the testator had modified the original will in a codicil in order to provide for the fact that the father would be considered the owner of the building until the young man turned 25.

However, the young man was only 24 when he received the claim and could see no reason why the Department should think he was part owner of the building. His father, after all, maintained that he was still the sole owner. What's more, the notary who drew up the codicil confirmed that the young man would have no property right to the building until the age of 25.

The Québec Ombudsman succeeded in having the claim cancelled and the amounts already withheld were reimbursed.

2.1.4

LE MINISTÈRE DE LA FAMILLE ET DE L'ENFANCE

LE MINISTÈRE DE LA FAMILLE ET DE L'ENFANCE

The mission of the ministère de la Famille et de l'Enfance is to develop the importance of the family and children and help them reach their full potential.

Its responsibilities in the area of family issues are to provide financial support—particularly to lower-income families—in order to ensure that the basic needs of children are met; to facilitate the harmonization of professional and family responsibilities and promote a balance between the two; to provide parents with financial support so that they may have easier access to maternity, paternity and parental leaves.

The Department's responsibilities with regards to children are, among others, to develop and maintain a network of childcare centres which provide educational childcare and support to parents; to foster the harmonious development of childcare services; to facilitate each family's access to these services.

In addition, the Department develops guidelines and policies to help families and children reach their full potential, and presents them to the government. It also oversees the implementation of these guidelines and policies. As well, the Department advises the government, its departments and agencies on any issues pertaining to the family and children. It also ensures the consistency of governmental action.[1]

Access to the services provided through subsidized childcare programs is one of the most significant problems observed by the Québec Ombudsman. Moreover, many citizens have called upon the Québec Ombudsman in order to expose inconsistencies in a number of policies established by the ministère de la Famille et de l'Enfance, administrative errors, the quality of recourse available and the lack of information on the basic organization of services.

Access to reduced contribution day care services in day care centres and childcare centres is a persistent problem.

In his last Annual Report, the Québec Ombudsman exposed the problems parents were experiencing in obtaining access to reduced contribution spaces. It is important to recall that only 50% to 60% of needs are being met. The ministère de la Famille et de l'Enfance admits that it will be unable to meet the demand it has created before September 2005 or 2006. As a result, many parents are forced to find and cover the entire cost of unsubsidized childcare. However, many families cannot afford to pay for the daily costs of childcare.

1. *An Act respecting the ministère de la Famille et de l'Enfance*, R.S.Q., c. M-17.2, sections 2 to 7.

Faced with a situation that is unfair to citizens, and given the fact that the universal access referred to in the family policy has yet to be attained, the Québec Ombudsman asked that the ministère de la Famille et de l'Enfance adopt temporary corrective measures until the network is able to provide enough subsidized spaces.

The Québec Ombudsman first asked the Department to ensure optimal utilization of available day care spaces. It therefore suggested that the program that provides access to reduced contribution spaces be expanded to include profit-making day care centres that have held a license since June 1997.

Furthermore, the Québec Ombudsman recommended that the tax credit for unregulated childcare be increased up to an amount or rate that would bring the actual cost of unsubsidized childcare down to the cost of a subsidized space.

Lastly, the Québec Ombudsman recommended that the Department impose standards for granting priority access to reduced contribution spaces and implement an impartial, independent and swift appeals measure.

In October 2000, the Department maintained its refusal to implement new temporary measures, including the introduction of criteria for determining priority access to subsidized spaces. The Department, citing the need to respect different political choices, including the autonomy of childcare centres, respect for the plan's standard of universality in its entirety, budget constraints and the improvement of certain measures, including tax credits, rejected the Québec Ombudsman's recommendations. Instead, the Department chose to: "... initiate discussions with childcare representatives in order to establish the priority to be granted for spaces and a procedure for managing requests which respects the managerial independence of childcare centres."[2] These discussions have yet to produce any concrete measures.

The Department ... to define ... granting ...

A subsequent meeting with authorities from the ministère de la Famille et de l'Enfance failed to define any new solutions in terms of measures that could be implemented without calling the established guidelines into question. The Québec Ombudsman and the Department continue to discuss the issue.

... a complaints-handling mechanism.

In his last Annual Report, the Québec Ombudsman pointed out that the ministère de la Famille et de l'Enfance had made a commitment to provide a service for processing complaints made against the Department and the network of childcare services. According to the policy on the processing of complaints, in effect since April 1, 2001,

2. Executive Assistant to the Minister for Child and Family Welfare, letter of October 6, 2000 addressed to the Deputy Ombudsman.

this service is part of the branch of services offered to families and children which is the responsibility of the Assistant Deputy Minister of Operations.

As it has indicated to several departmental and agency officials, the Québec Ombudsman believes that whoever is in charge of internal dispute settlement mechanisms must be able to act independently of the agency's administrative components in order to ensure that complaints are processed with impartiality and credibility. For this reason, the Québec Ombudsman had urged the Assistant Deputy Minister to take charge of this service.

Nevertheless, the Québec Ombudsman recognizes that the ministère de la Famille et de l'Enfance has maintained an open-minded position and has accomplished commendable work in developing its complaints processing policy. This new way of solving problems should also facilitate the work of childcare centres that must deal directly with complaints. Furthermore, this mechanism is likely to provide the Department with a direct and immediate source of information on the problems that parents and children face.

The Québec Ombudsman noted several weaknesses in the parental insurance plan proposed in June 2000

A new family support program—designed to minimize revenue loss for parents who decide to stay home full time with their new born child or newly-adopted child for the first year—was proposed on June 6, 2000 by the Minister responsible for Child and Family Welfare.[3] The parental insurance plan is the third and final element of the family policy. The draft "Regulation respecting parental insurance" was made available to all interested parties on July 14, 2000 for the purpose of discussing the draft legislation.

The Québec Ombudsman pointed out significant weaknesses with respect to the transparency of the plan's adoption process. It noted that many of the new plan's basic terms—including the contribution rate, the benefit rate and the duration of benefits—were included as part of the draft regulation but not as part of the bill. Furthermore, many of the provisions included in the latter needed to be clarified or reformulated to avoid any ambiguity. Several regulations and sections—essential for understanding the plan—had yet to be written. The bill allowed the government to dispense with compliance with the publication rules for the first regulations to be adopted.

As a result, the Québec Ombudsman formulated recommendations designed to clarify and adjust the proposed regulations in order to provide citizens with a complete and clear picture of the plan and treatment that is consistent with other government

3. Bill No. 140 entitled "*An Act respecting parental insurance*" was introduced to the National Assembly on June 6, 2000.

plans. After lamenting the fact that democratic rules had not been respected, the Québec Ombudsman asked—as did the members of the Commission des affaires sociales—that the standard procedure for adopting regulations be applied.

The Department responded favourably to some of these recommendations. For instance, the main parameters of the parental insurance plan are now included in the bill, and the meaning and scope of certain ambiguous sections have been clarified. Furthermore, the section of the law authorizing the ministère de la Famille et de l'Enfance to dispense with compliance with the standard publishing procedure for regulations was removed. Lastly, the Québec Ombudsman was informed that the recommendations pertaining to the modifications of the draft regulation would later be submitted to the management board in charge of the matter.

It should be noted that the ministère de la Famille et de l'Enfance refused to include the contribution rate in the legislation. In doing so, the Department hopes to avoid unnecessarily burdening the rate modification procedure which will vary according to the Federal employment insurance plan's contribution exemption. The Québec Ombudsman accepted the Department's arguments concerning the opportunity to anticipate the plan's contribution rate through regulatory channels rather than legislative channels.

The Québec Ombudsman noted that the draft legislation is not yet completely harmonized with other laws. For example, it makes no reference to An Act respecting labour standards[4] which protects parents' rights to parental leaves. The Department informed the Québec Ombudsman that the labour standards would be harmonized with the bill on parental insurance within the context of another bill specifically designed to amend An Act respecting labour standards. The Québec Ombudsman, however, feels that it would be more appropriate if the associated modifications were tabled at the same time as the bill serving to introduce the plan.

Still another fact motivated the Québec Ombudsman to set forth some recommendations—the parental insurance benefits are determined according to the average weekly income earned in the last 26 weeks of insurable income (a minimum of 16 weeks of insurable income is required). If a worker earns a lower income during these weeks, he will be penalized for the duration of his parental leave.

The Québec Ombudsman therefore recommended that the bill be modified to allow workers to establish an insurable income which better reflects their regular situation, along the same lines as the income replacement plan established by An Act respecting occupational health and safety.

4. *An Act respecting labour standards*, R.S.Q., c. N-1.1.

The Department refused to implement a scale for correcting or adjusting insurable income, claiming that it would increase the cost of the plan. However, given that access to the plan's benefits would be compromised for many workers as a result of the Department's refusal, the Québec Ombudsman did not let up. It suggested that before rejecting the recommendation out of hand, the Department should assess the impact of introducing the scale.

According to the Québec Ombudsman, the proposed plan does not take low-income workers into consideration when determining benefits. It therefore proposed that a minimum be set to ensure that low-income families adequately benefit from the plan.

As for the ministère de la Famille et de l'Enfance, it pointed out that the proposed Act respecting parental insurance allows for a supplement intended for low-income families, that this supplement is currently under examination and should soon be clearly defined. The Québec Ombudsman expects to monitor the situation and examine the proposed terms.

Another of the Québec Ombudsman's important findings concerns the inequality which parents face as a result of the plan's options, which are all of a different duration and provide a different rate of income replacement. In fact, option A—the longest option—extends over a maximum of 55 weeks, while option B has a maximum duration of 43 weeks. The rate of income replacement for option A is between 70% and 55%, depending on the length and type of leave. For option B, the rate is always 75%.

When comparing options A and B and taking into consideration a leave of equal duration for both, option B (the shortest leave) is always more worthwhile for parents in terms of the amount the plan pays out in benefits. It is also clear that that the difference in the amount of benefits becomes more significant as the duration of the leave increases. As such, with option A, it takes 51 weeks for parents to receive the same amount they would be paid after only 43 weeks with option B.

The plan, as it has been put forward, forces parents to jointly and definitively choose one of the two options upon their initial request for benefits. This does not account for the fact that parents are not always in control of when they will return to work. As such, parents who choose option A (the longest leave) will suffer a greater financial loss if one parent must return to work earlier than expected. Given this, the bill designed to reduce income loss due to parental leaves does not meet its main objective.

In addition, the variable regulations of option A are difficult to understand and make budget planning a challenge. Since managing Option B is easier for both the plan manager and for the parents, the risk of error is reduced.

which is
to parents

The Québec Ombudsman recommended that the plan be revised so that the same amount of benefits be paid out for leaves of the same duration, up to 43 weeks—the number of weeks offered in option B.

The Department, however, does not share the Québec Ombudsman's point of view. Despite this, it does recognize that the total amount of benefits paid out to parents who choose the longest option (option A) and who return to work before the end of their leave is lower than the total amount of benefits paid out to those who take the entire leave. The Department agreed to provide parents who apply for benefits with the information required to carefully evaluate their personal situation before choosing an option.

The Québec Ombudsman has been awaiting a response from the Department since its last intervention in March 2001.

[illegible] agencies threatened by subsidy cuts made by the [illegible] without any advance notice and without any adequate control [illegible] the exact amount these agencies were owed.

The Québec Ombudsman received complaints from day care centres concerning cuts in monthly subsidies paid out by the ministère de la Famille et de l'Enfance. Many problems were brought to the attention of the Québec Ombudsman, including unjustified claims, delays in correcting administrative errors, refusals to consider requests for review or to accept flexible repayment terms. Day care centres also denounced cuts made to their financing without any advance notice from the Department.

These problems surfaced after the Department verified the 1997–1998 and 1998–1999 financial reports of the day care centres and realized that it had paid out too much in subsidies for these years. As a result, the Department automatically reduced the amount of the subsidy paid out to the day care centres the following month. The Québec Ombudsman quickly learned that childcare centres were experiencing the same problem. This operation generated a significant number of claims on the part of the Department—850 for 1997–1998 alone.

The investigation revealed that the Department had reimbursed itself or was planning to do so without having validated all of the data used to determine the amounts it had withheld from the day care and childcare centres. It also noted that some of the Department's claims were unjustified because of various errors.

Moreover, confusion was caused by unclear guidelines set by the Department concerning the manner in which the rate of occupancy of subsidized day care spaces was to be entered in financial reports. As a result, quite involuntarily, day care and childcare centres did not always provide the information required in these reports.

In other cases, the Department—without ever taking into consideration amounts that it owed day care and childcare centres—withheld money which these organizations supposedly owed them.

These subsidy cuts, made without any advance notice, affected the budgetary stability of many organizations, particularly those which are more financially vulnerable. This loss of revenue even compromised the survival of organizations in cases where the reimbursement far outweighed the monthly subsidy.

Furthermore, given the complex financial regulations governing reduced contribution spaces and the fact that the methods for verifying the number of spaces occupied had been substantially modified during the two years in question, there were a greater number of unintentional errors. Obviously, the entire set of verification methods needed to be revised.

The Québec Ombudsman first of all recommended that the ministère de la Famille et de l'Enfance cease making unilateral subsidy cuts. Second, it asked that procedures be implemented to validate the data the Department uses to determine the exact amounts it is owed. Third, the Québec Ombudsman emphasized the need to define flexible terms of repayment in order to avoid destabilizing day care and childcare centres.

The ministère de la Famille et de l'Enfance accepted the soundness of the Québec Ombudsman's point of view. It also admitted that changing certain calculation parameters could bring about the desired effect.

As such, the Department spread the payments to be made by day care and childcare centres out over a period of three months, starting August 1, 2000. It also clarified the implemented modifications in order to help organizations adequately revise their financial reports. Furthermore, the Department implemented a claim review process during which the recovery of the debt is put on hold. This initiative, and the payments made to centres in instalments to reimburse the amounts it had withheld without just cause, solved most of the problems brought to its attention.

With these problems ironed out, verification of the upcoming financial reports should in all likelihood be carried out without negatively affecting any of the parties involved.

2.1.5

LE MINISTÈRE DE L'INDUSTRIE ET DU COMMERCE

LE MINISTÈRE DE L'INDUSTRIE ET DU COMMERCE

The mission of the ministère de l'Industrie et du Commerce is to "contribute to Québec's economic development by enhancing market development and company competitiveness with a view to encouraging job creation."[1]

It offers specialized expertise in many fields, including market development, industry, trade agreements, innovation, technology, management, entrepreneurship, co-operative development, as well as industrial, sectoral and regional development. It organizes various activities pertaining to the sharing of information, promotion and awareness, professional and technical support, partnerships and legislative management.[2]

In 2000–2001, the requests for intervention which the Québec Ombudsman received concerning this Department pertained primarily to the "Connecting Families to the Internet" program.

The Québec Ombudsman intervened on several occasions regarding the "Connecting Families to the Internet" program; the Department provides rectification.

During the 2000–2001 budget speech, the government announced a measure aimed at helping families get connected to the Internet. On May 1, 2000, in his press speech, the Minister of Industry and Trade estimated that some 200,000 families would benefit from this financial aid until March 31, 2001. He added that "eligible families—those receiving family allowances—must first contact the call centre and request an attestation proving that they are family allowance recipients."[3]

He also announced that the Régie des rentes du Québec's call centre "would be in operation until March 31, 2001, the program's registration deadline." Only the Régie was in a position to attest that the applicants are entitled to family allowances and are therefore eligible for the program.

Furthermore, in its pamphlet on the program[4], the Department defines eligible families as "those who reside in Québec and who receive or will begin receiving family allowance payments from the Régie des rentes du Québec between May 1, 2000 and March 31, 2001, regardless of whether or not they were connected to the Internet when the program came into effect on May 1, 2000." Under the heading of

1. MINISTÈRE DE L'INDUSTRIE ET DU COMMERCE [www.mic.gouv.qc.ca], 2001.
2. op. cit., note 1.
3. Guy JULIEN, ["Connecting Families to the Internet" program launch], May 1, 2000, École Saint Jean-Baptiste, Montréal.
4. MINISTÈRE DE L'INDUSTRIE ET DU COMMERCE, "*Connecting Families to the Internet Program*" pamphlet, 2000.

Registration Period, we can also read that "families have from May 1, 2000 to March 31, 2001 inclusively to take advantage of this program... ".

Any citizen could therefore reasonably assume that he had until March 31, 2001 to register with the Régie in order to take advantage of the program. However, the Department decided to change the eligibility rules which had been in effect since May 1, 2000. In a press release dated March 5, 2001, the Department informed the public that the deadline for requesting an attestation from the Régie was brought forward to March 19, 2001.

Registration deadline: March 31, 2001

As a result, the Québec Ombudsman was asked to intervene in the matter. The Department maintained that if families requested attestations after March 19, they would not receive the documents in time to purchase their computer system before the March 31, 2001 deadline. The investigation also revealed that the Régie des rentes had difficulty meeting demand due to a last-minute rush. Furthermore, technical problems with the call centre's phone system prevented many families from either reaching the call centre or having their call returned when leaving a message on the answering machine.

Changing the deadline less than 15 days before the deadline is unacceptable

As far as the Québec Ombudsman is concerned, it was unacceptable to change a widely circulated and mediatized program regulation less than fifteen days before its initial deadline. It felt that all eligible families who filed an attestation request no later than March 31, 2001 should be able to benefit from the program. It also considered that it would be unfair to prevent several families from taking advantage of the program because of problems for which they bore no responsibility.

Two extra days granted

The Department responded in part to the concerns of the Québec Ombudsman by granting families two extra days to present their attestation request to the Régie des rentes, thereby moving the deadline to March 21. An advertising campaign was launched in order to inform the public and, as a means of circumventing the phone system backlog problem, families were asked to send their request by mail, the postal seal proving the date on which their request was sent.

The Québec Ombudsman also noted that, with normal mail delivery delays, many families would not receive their attestation before the program's March 31 deadline, even if they had filed their attestation request with the Régie before the March 21, 2001 limit. Other families would have only one day to make their purchase, have the equipment delivered and get connected to the Internet. Clearly, purchasing a computer is an investment which requires judgement and, faced with such time constraints, citizens would likely be at the mercy of merchants' inventories.

The Québec Ombudsman therefore asked the ministère de l'Industrie et du Commerce to grant families an additional, reasonable period of time, after March 31, to purchase or lease their computer and get connected to the Internet. Sympathetic to the problem, the Department instituted special measures for families who had received their attestation on or after March 29, 2001. The Department thus chose to assume payment of the rebate on the purchase or lease of a computer, as long as the equipment was delivered by April 28, 2001 and as long as the families were connected to the Internet no more than 30 days after delivery.

Soon after, another problem surfaced. According to the Régie's estimates, some 5,000 families, newly eligible for family allowances in March 2001, were not able to take advantage of the program. In fact, given the time it generally takes to integrate information provided by the Federal government into the Régie's computer system, the latter would not be able to deliver an attestation to these newcomers before the March 31, 2001 deadline. However, since excluding these families because of delays they were not responsible for was unjustified and unacceptable, the Québec Ombudsman again intervened.

The Department welcomed the Québec Ombudsman's point of view. However, because the proposal would result in additional costs, the Department referred the matter to the Conseil du trésor. It intervened with merchants to ensure respect for the rights of families who had purchased their computers before the deadline but had not yet received their equipment.

The Department also created a review committee to handle problem cases. The committee is made up of representatives from the ministère de l'Industrie et du Commerce, the ministère de la Famille et de l'Enfance and the Régie des rentes. Citizens who feel they have been wronged with relation to the program's application are directed to the review committee, and the Québec Ombudsman ensures that they are treated in a fair and appropriate manner.

Finally, on April 24, 2001, the ministère de l'Industrie et du Commerce informed the Québec Ombudsman that families who were receiving their family allowance retroactive to March 2001, were now eligible for the program and would personally be receiving information concerning their eligibility. The Québec Ombudsman expects to keep a close watch on the application of this new measure.

2.1.6

LE MINISTÈRE DES RESSOURCES NATURELLES

LE MINISTÈRE DES RESSOURCES NATURELLES

The ministère des Ressources naturelles is responsible for managing and developing Québec's territory, as well as energy, forest and mineral resources. Its principal mandates are as follows:

- Foster and disseminate knowledge about Québec's territory and its resources, and develop tools to ensure proper resource management.
- Ensure the safe supply and the efficient use of energy. It is also responsible for delivering a certain number of technical and financial assistance programs and administering laws and regulations pertaining to the use of hydroelectric power, oil and gas exploration, the marketing of petroleum products as well as the energy efficiency of electrically and hydrocarbon powered equipment.
- Develop, protect and promote Québec's forest heritage.
- Manage Québec's mineral resources with the best interests of Québecers in mind.

Though the Department receives very few service requests, one particular case deserves mention.

A citizen raising objection to a ministère des Ressources naturelles regional office's collecting of federal (GST) and provincial (QST) taxes calls upon the Québec Ombudsman for redress: taxes were charged in the lease of public land used for residential purposes by a group while the lease had been conveyed for community resort purposes. He also claims that some regional offices do exactly the opposite in identical cases or where a lease has been granted to an individual for personal use.

The Québec Ombudsman proceeded to review tax legislation and the ministère du Revenu's documentation on the subject. The findings were that land used for "residential purposes" was tax free and no provision could justify taxes on land leased to groups for "community resort purposes" but used for residential purposes. The Québec Ombudsman also enquired on taxes collected by the ministère des Ressoures naturelles on public land sold to tenants who used it, at the time of purchase, for residential purposes.

The investigation revealed that some regional offices of the ministère des Ressources naturelles applied tax regulation irregularly. The tax application guide written out by

the ministère des Ressources naturelles in 1995 after receiving interpretations by the ministère du Revenu in 1993 and 1994 and for use by its personnel, was not quite detailed enough for a legal and standard application of tax regulations. Arguments made by the ministère des Ressources naturelles were that it had been charged by the ministère du Revenu solely to collect taxes and not to interpret highly complex tax legislation. The Québec Ombudsman then prompted the ministère des Ressources naturelles to obtain clear interpretation and explanations from the ministère du Revenu and supported the initiative throughout.

Following months long communications between the two Departments, the ministère du Revenu confirmed its notices sent in 1993 and 1994: tax exemption is effectively ordained when land is used for residential purposes, and rightfully so regardless of tenant. In other words, the fact that land is leased to a non-profit organisation (group, association or club) for community resort purposes, does not mean it may not be used for residential purposes. The category defined by the ministère des Ressources naturelles as land based for "community resort purposes" should therefore not be used as the criterion to collect taxes on such property. The ministère du Revenu also confirmed that the same tax exemption applied to the sale of land used for residential purposes. After receiving the explanations, the ministère des Ressources naturelles agreed to refund all the tax money the tenants had been charged.

However, according to federal (GST) and provincial (QST) tax laws, a person who has been illegally charged taxes, is entitled to a refund from the ministère du Revenu or whatever organisation made him or her pay, within a two-year delay from the date the taxes were paid out.

According to the Québec Ombudsman, people are being penalised by the application of such restrictive delays. Several months had passed since the Ombudsman had brought the case to the attention of the ministère des Ressources naturelles. His opinion was that the public just did not have to pay for such extensive delays in getting answers from the ministère du Revenu and appropriate action from the ministère des Ressources naturelles.

The ministère des Ressources naturelles took up the suggestion made by the Québec Ombudsman: it asked the ministère du Revenu to alleviate the two-year delay and so provide for contingencies people were in no way responsible for. The latter rejected the suggestion arguing that the ministère des Ressources naturelles was sole responsible for paying back its tenants. Quoting its role as authorised agent, the ministère

des Ressources naturelles decided to comply with the ministère du Revenu's notices and to take the delay into consideration to calculate payment.

The Québec Ombudsman not resting its case, approached the ministère des Ressources naturelles once more, emphasising that all the Departments are part of one sole entity: Government. The latter just could not collect taxes illegally for eight years, admit to have made a mistake, produce undue delays between the time the situation is brought to knowledge and corrective action is taken, and then accept limited responsibility by imposing a two-year delay for reimbursement.

The people in charge at the ministère des Ressources naturelles finally gave in. They agreed to pay the persons involved in the claim and to disregard the two-year legal delay. In concrete terms, a total of $853,000 of GST and QST, including interest, collected respectively from January 1st, 1991 and July 1st, 1992 was refunded. The Department thus acted as a responsible organisation towards the public.

2.1.7

LE MINISTÈRE DU REVENU

LE MINISTÈRE DU REVENU

Acting for the Québec government, the ministère du Revenu collects income tax and consumption taxes from taxpayers in order to ensure the financing of public services. The Department's role includes advising the government on fiscal and socio-fiscal policies and reallocating amounts granted to citizens by the government through tax-related social programs such as: the Real Estate Tax Refund program, which provides a partial refund of real estate taxes to persons with low income; the Shelter Allowance program, which provides direct financial assistance for rent to low-income households; the Parental Wage Assistance program, which encourages parents to remain in the work force, even if their income level is only slightly above the level of social aid.

The ministère du Revenu is also responsible for collecting Québec Pension Plan contributions as well as contributions for the healthcare, prescription drug insurance and Commission des normes du travail plans. The Department also collects the goods and services tax in Québec. In addition, the Department is responsible for managing the Support Payment Collection program.

TAXATION

The ministère du Revenu responds favorably to one of the Québec Ombudsman's recommendations—legislation limiting the Department's powers of collection.

In his last Annual Report, the Québec Ombudsman mentioned that, on May 4, 2000, the Minister of Revenue announced the tabling of a bill[1] for the purposes of limiting the Department's powers of collection when a person contests support payments by issuing a notice of adverse claim or by appealing the decision at the Court of Québec.

The Québec Ombudsman considered that the powers of collection granted to the Department created an imbalance of power between citizens and the State. For this reason, it has joined in with many other groups, including the Barreau du Québec and the Association de planification fiscale et financière, in order to have supporting legislation adopted.

Bill No. 141, presented to the National Assembly on June 8, 2000, was adopted shortly after, on June 16.[2] As a result, for assessment notices issued starting October 1, 2000—for income tax owed by individuals or businesses—the Department cannot apply any collection measures if the assessment is being contested, and this, until a final decision

1. Bill No. 141. *The Act respecting the Ministère du Revenu as regards the suspension of recovery measures*, 2000.
2. *An Act to amend the Act respecting the Ministère du Revenu as regards the suspension of recovery measures*, L.Q. 2000, c. 36.

is rendered and the case is closed. The Québec Ombudsman is pleased to see this new regulation come into force.

In order to avoid further problems arising from vehicle donation, the Québec Ombudsman asked the ministère du Revenu to specify information to be included on the departmental form.

According to the taxation rules in effect, the Société de l'assurance automobile du Québec must not collect the Québec sales tax on the donation of a road vehicle when the change in registration is made between related individuals (spouses, children…) and when no consideration is paid. Those who wish to benefit from this exemption must fill out a form and provide the ministère du Revenu with the information required to complete the transaction.

A taxpayer's daughter gave her father a car in October 1999. She provided the documents required by the "Application for Non-Payment of the Québec Sales Tax respecting a Gift of a Road Vehicle Registered in Québec" —proof of family ties, the vehicle's initial purchase contract and proof that the vehicle had been paid for.

A few months later, the ministère du Revenu sent the taxpayer an assessment notice claiming sales tax and interest for this transaction. Since the notice provided no justification for the refusal, the taxpayer contacted the Department. The Department explained that, based on the information which they had received, the taxpayer had paid for the vehicle. Dissatisfied, the taxpayer asked the Québec Ombudsman to intervene.

Taxpayers have the right to be heard and in order to enable them to provide an explanation and relevant evidence, the Department must, according to the Québec Ombudsman, provide them with all information pertaining to the facts which support the assessment notice.

Refusals must be justified and citizens must be provided with all the facts

The investigation revealed that the Department questioned the nature of the transaction solely on the basis of one criterion: the vehicle's value. According to the Québec Ombudsman, the Department did not have any information that could allow it to confirm that this was not a gift without consideration. In this respect, the Department agreed that in fact, it would have been more appropriate to speculate that the transaction was not a gift rather than to assert this to be the case.

The Québec Ombudsman also pointed out that the Department should inform taxpayers exactly which supporting documents it deems appropriate for tax exemption requests. Based on the form's initial wording, taxpayers legitimately assumed that the

only supporting documents they had to provide were those indicated in the section requiring proof that the vehicle has been completely paid for.

To prevent this from happening again in cases of vehicle donations, the Québec Ombudsman asked the ministère du Revenu to specify in the form that if the documents provided do not adequately prove the right to sales tax exemption, the Department can require any other document it deems necessary. The Department welcomed the proposal and added a note to its form.

As for the taxpayer, he contested the assessment through an opposition claim, a decision was rendered in his favour and the assessment was cancelled.

An income tax return filed with the ministère du Revenu on three separate occasions and family allowance payments suspended for several months by the Régie des rentes.

Several citizens contacted the Québec Ombudsman when, for various reasons, the ministère du Revenu made them wait for their tax refunds. Long delays in processing income tax returns may sometimes cause far more serious problems than merely slowing down the delivery of citizens' refunds.

In this case, a citizen sent her 1999 income tax return to the Department before the deadline stipulated by the law. Since she still had not received her assessment notice in June 2000, she decided to contact the Department to find out what was happening with her file. To her surprise, the agent informed her that her income tax return was nowhere to be found. She therefore quickly sent the Department a copy of her return by registered mail.

The Québec Ombudsman asks the ministère du Revenu to speed up processing of a return

In August 2000, her family allowance payments were suspended by the Régie des rentes du Québec. In fact, the Régie bases such decisions on the data provided by the ministère du Revenu in order to determine the amount to pay out for family allowances. Since the Régie had not received any data on the citizen, the woman's payments were suspended.

The following October, the citizen still had not received anything from the ministère du Revenu and was beginning to worry. She therefore called the Department again, only to learn that the computer system indicated she still had not filed her income tax return! It was then that she decided to submit a copy to the Department in person. The agent marked the report "urgent" and assured the citizen that it would be quickly processed.

Two months later, in mid-December, the citizen still had not heard from the ministère du Revenu. She contacted the Department yet again and learned that there was no data on her return in the computer system.

With nowhere left to turn, the citizen contacted the Québec Ombudsman. At the time of the investigation, the Department claimed that the woman's income tax return was under review. The Québec Ombudsman therefore asked the Department to speed up the process and, in less than two weeks, the citizen was informed of when her assessment notice would be issued. Her tax data was then forwarded to the Régie so that the latter could determine the amount for family allowance payments. This mother of four was therefore deprived of her family allowance payments for several months due to the Department's highly questionable conduct in this case.

A letter sent to the wrong address and $5,509 in collection fees charged to the citizen: the Québec Ombudsman intervenes.

The ministère du Revenu has extensive debt collection powers and has many measures at its disposal for collecting outstanding debt. The law[3] stipulates that when the Department must resort to one of these measures, 10% is added to the outstanding balance. But what happens when the collection measure is unjustified?

A citizen had been operating a business for several years and had always met his tax responsibilities. However, having experienced difficulties in recent years, he had accumulated a debt with the Department of approximately $87,000 for failing to remit taxes. The citizen decided to pay off the entire debt and tried, in vain, to make arrangements for payment with the Department's tax collection agent—the required monthly payments were much too high. He therefore decided to call upon his local MNA for help.

Sympathetic to the citizen's situation, the latter sent a letter to the Department on July 7, 2000. In the citizen's name, the MNA proposed a repayment schedule to the Department, asking that interest on the debt be cancelled. In a letter of reply dated September 20, the Department stated that the business was not in a situation justifying inability to repay the debt and informed the citizen that it refused to cancel the interest owed. The Department also invited the citizen to contact its collection agent again to negotiate a new repayment agreement. Should the citizen fail to do so, collection measures would be undertaken.

The citizen did not receive this letter until October 13. A few days later, he realized that his bank account was frozen and that his account balance had been transferred to the ministère du Revenu. What's more, $5,509 in collection fees had been added to the

3. *An Act respecting the Ministère du Revenu*, R.S.Q., c. M-31, section 12.1.

outstanding balance. He did not contest the fact that the Department refused to cancel the interest. He immediately made an appointment with his agent in order to define the terms of a repayment agreement. A final decision was rendered on October 19.

The citizen then asked the Québec Ombudsman to intervene—he felt that he had been penalized by the Department's delay in informing him of its refusal to cancel the interest. He claimed that the collection measures could have been avoided if he had received the letter within a regular delivery time.

The Québec Ombudsman's investigation revealed that the Department had not sent the letter of September 20 to the correct address. It had used the erroneous address indicated in the letter sent by the citizen's MNA—the street address of the building was incorrect. The letter was returned to the Department and sent to the correct address on October 12.

The Québec Ombudsman recommended that the ministère du Revenu cancel the $5,509 in collection fees charged to the citizen since it should have checked the address in the citizen's tax file and since the citizen intended to pay off his debt. As a matter of fact, the citizen had already made all of the necessary arrangements with his financial institution for repayment of the debt and was merely waiting for the Department to respond to his request for the cancellation of interest. After a few exchanges, the Department finally followed through with the Québec Ombudsman's recommendation.

What happens when a person is truly unable to provide the ministère du Revenu with the required document?

Tax legislation stipulates that the ministère du Revenu has the right to demand certain documents from taxpayers in order to grant them deductions or tax credits requested in their income tax return. But what happens when a person is truly unable to provide the required document?

In September 1999, a citizen asked the ministère du Revenu to modify her 1998 income tax return in order to receive the refundable tax credit for childcare expenses. Her request was turned down. The Department required that she provide a "24" slip or a receipt from the individual who received the payments in order to justify the childcare expenses. When providing a receipt, the latter must include the social insurance number of the person concerned, the person's address and signature.

The Department could have, and most certainly should have conducted a check in its system.

However, in this particular case, the day care centre which provided childcare services to the woman was an incorporated company which had since gone out of business. It was therefore impossible for the citizen to secure the documents required by the Department. She did, however, have proof of payment—copies of the cheques made out to the day care centre in question. She forwarded these to the Department but the decision remained unchanged.

The woman therefore called upon the Québec Ombudsman, providing it with several documents to support her complaint. It was then that the Québec Ombudsman discovered the day care centre's company number on an internal document and brought it to the ministère du Revenu's attention. With the number in hand, the Department was able to run a simple check in its computer system, confirming, as the woman had claimed, that the day care centre had in fact existed. The Department was also able to trace the date on which the day care centre closed.

Thanks to the Québec Ombudsman's intervention, the Department finally agreed to grant the requested tax credit. The Québec Ombudsman found that the ministère du Revenu agents who initially refused the citizen's request could have, and certainly should have conducted a simple check in the Department's computer system.

SUPPORT PAYMENT COLLECTION

The universal support payment collection system was implemented in 1995. The new law[1] aimed to remedy the shortcomings of the system already in place and expand the collector's mandate. Having observed numerous problems pertaining to the application of this new system, the Québec Ombudsman thought it essential to produce two special reports, one in August 1997[2] and another in June 1998[3], which outlined recommendations likely to improve the situation.

Like the ministère du Revenu, the Québec Ombudsman agreed to conduct an assessment of the application of this system after five years. This task was completed with the collaboration of the Department's authorities and the report was released on May 24, 2001.[4] The present provides an overview of this report's main findings.

A number of problems will soon be resolved, while others will require close monitoring on the part of the Québec Ombudsman. Problems which remain unsolved include difficulty in recovering support payment advances, problems pertaining to the billing of amounts owed to the Department, as well as delays and other shortcomings in the recovery of support payments from debtors.

During the 2000–2001 fiscal year, the Québec Ombudsman received 667 requests for intervention pertaining to support payment collection. Of these, 360 resulted in a complete investigation and, out of this number, 113 complaints were justified. The rate of justified complaints therefore stands at 31.3% compared to 41.3% for the previous fiscal year.

The Support Payment Collection Department

Is the Department justified in claiming amounts paid out without the consent of the parties involved?

An Act to facilitate the payment of support[5] stipulates that the Minister can pay out advances of up to $1,500 to creditors for a period of three months. These amounts are paid out in the debtor's name and are collected from the latter.

Before an employer or a self-employed worker remit payments, the computer system is programmed in a way that allows the Department to make up to six consecutive payments[6] without having collected any money from the debtor. In

1. *An Act to facilitate the payment of support*, R.S.Q., c- P-2.2.
2. THE QUÉBEC OMBUDSMAN. *Support Payment Collection System: Problems Solved, Problems Still to Go*. Québec, August 1997.
3. THE QUÉBEC OMBUDSMAN. *Problèmes de la Loi facilitant le paiement des pensions alimentaires. Deuxième rapport du Protecteur du citoyen*, Québec, June 1998.
4. THE QUÉBEC OMBUDSMAN. *Universal support payment collection system – Five year update*, Québec, May 2001.
5. op. cit., note 1.
6. According to the first paragraph of section 36 of *An Act to facilitate the payment of support*, the Minister pays support twice a month. Six instalments are therefore equal to three months of support payments.

this case, neither the debtor nor the creditor is informed that money is paid out in the form of advances.

The problem arises when a ruling retroactively cancels support payments for a period during which advances were paid out. Unless otherwise specified in the ruling, the Department claims this amount from the creditor by virtue of section 33 of the Act.[7] It is in cases like this that the Department's way of doing things can have a significant negative impact on the citizens concerned. The two following examples serve to illustrate this point.

In the first case, a creditor filed a complaint with the Québec Ombudsman on December 18, 2000 concerning a claim from the Department for "unauthorized amounts." Following a ruling that retroactively cancelled the support payments, the Department claimed an amount close to $600 for advances which had been paid out.

Had she been notified by the Department, the citizen would have refused advances.

This unexpected debt, combined with the lowered support payments, placed a tremendous financial burden on the woman. Given that her children's needs were increasing and that she was already experiencing difficulty making ends meet, the woman was unable to repay the debt. She claims that, if the Department had taken the time to notify her that the source deductions had stopped, and if she had been aware of the consequences, she would most certainly have refused the advances. Despite this, the Department acted in accordance with the law which states that the creditor must reimburse the unauthorized amounts.

Incidentally—as the following case clearly illustratesæit seems that even when the Department is informed of the creditor's wish to refuse advances, the problem remains.

Advances paid out despite a citizen's refusal and amounts claimed by the Department following the death of the woman's spouse

On November 24, 2000, a woman filed a complaint with the Québec Ombudsman concerning a claim she received for repayment of advances paid out while the debtor was on sick leave. The advances were paid out despite the fact that the woman had initially informed the ministère du Revenu in 1998 that she wished the support payments only be deducted directly from the debtor's income insurance benefits. The Department still paid the woman $4,098 in advances.

On February 28, 1999, the debtor took another leave from work. The woman notified the Department again and specified that neither she nor the debtor wanted the advances to be paid out. Nevertheless, she still received $1,409. In April 2000, upon the debtor's death, the Department claimed all the advances from the woman.

7. op. cit., note 1, section 33: "Any creditor of support who receives from the Minister an amount to which he is not entitled shall reimburse that amount to the Minister."

Is the Department justified in claiming amounts paid out without the consent of the parties involved? The Québec Ombudsman recommended that as of October 1997, the Department notify parties when advances are paid out and inform them of the consequences which a retroactive support payment cancellation may have. It reiterated this recommendation on several occasions.

Finally, in February 2000, the Department included the information in the standard notice sent to creditors outlining the terms of payment for support. It provided creditors with an overview of how advances work and informed them of their repayment obligation in cases where the support payments are retroactively lowered or cancelled, or in cases where the arrears owed by the debtor are lowered or cancelled.

Despite the Department's commendable effort, the problem remains unsolved. The creditor still has no way of knowing if support payments have stopped or if advances are being paid out. The Québec Ombudsman has also recommended that the Support Payment Collection Department take the necessary measures to ensure that all the concerned parties are notified of the amount paid out in advances when support payments are cancelled or modified.

A bill from the Department is the source of much dissatisfaction: several citizens criticise the Department's often incomprehensible, sometimes erroneous account statements, as well as unjustified claims.

The countless legal and administrative constraints, as well as the number of adjustments resulting from changes in the guidelines which apply to family matters, make programming the Department's computer system all the more difficult. It is therefore not surprising that problems occur. Confused, citizens complain that the Department's calculations are inaccurate and, based on the Québec Ombudsman's experience, these complaints are often legitimate. The following example clearly illustrates this point.

Support payments were owed to two different creditors. One of the two received a bill from the ministère du Revenu for payment of an unauthorized amount. She paid the amount claimed but when she double-checked her calculations, she realized that in fact, she had not received an overpayment. She informed the agent in charge of her file of the situation but was not provided with a reasonable explanation. Therefore, she called upon the Québec Ombudsman for help in June 2000. The latter asked the Department to provide a comprehensible bill and justify the amount claimed from the creditor.

Dissatisfied with the answers provided by the Department, the Québec Ombudsman decided to conduct a thorough review of the case, and recalculate all the data, taking into account, all documents and evidence—those provided by the creditor, the

debtor as well as those provided by the employer and the Department. After several hours of crunching numbers and analyzing the evidence provided, the complaint was acknowledged to be justified and the reviewed file was submitted to the Department.

The claim was later reviewed anew by another agent. Then, in January 2001, still another agent was mandated with the case and the calculations were reviewed a third time.

A case is reviewed countless times [illegible] the Department [illegible] cannot provide a clear explanation of its calculations

The ministère du Revenu finally agreed with the Québec Ombudsman and the creditor, who was notified that the Department would reimburse her the amount of $598. On February 5, 2001, the Québec Ombudsman finally closed the book on this case.

On February 26, having failed to hear anything from the ministère du Revenu, the creditor called the Department and was informed that she would be receiving a mere $151 rather than the expected $598. The Québec Ombudsman took up the case anew and, to this day, the Department has yet to provide a clear claim which justifies the new amount.

The Québec Ombudsman feels that a computer system should properly manage the complex data required to generate error-free billing. It therefore recommended that the ministère du Revenu review the programming of its system in order to ensure that citizens receive not merely accurate, but also clear information.

At the Centre de perception fiscale [tax collection centre]

When support payments and arrears cannot be directly collected by the Support Payment Collection Department, either through a source deduction or payment order, the file is sent to the Centre de perception fiscale. The latter then conducts administrative seizures and, if necessary, conducts research that allows the Legal Department to undertake legal proceedings.

Obviously, processing a collection file requires much more time than processing a file in which payment may take the form of a deduction at source. In fact, "collection" is, in most cases, synonymous with "uncooperative debtors" and a range of measures must be used to get the latter to pay up.

This said, the fact remains that it sometimes takes years before any payment is received for collection files and, during that time, other underlying problems may surface.

The Québec Ombudsman points out that collection file processing priorities are problematic and laments the fact that, very often, the debtor's employment insurance benefits have time to run out before a seizure is undertaken.

Apart from conducting administrative seizures enforceable under the terms of the law (bank accounts, certificates of deposit, rent, etc.), one of the mandates of the Centre de perception fiscale is to seize sums of money paid out by the Federal government, specifically employment insurance benefits.

This is a very important role for the Centre since many debtors—who have quit, lost or terminated their jobs—receive these types of benefits and a garnishee summons is the only way to collect support payments.

What is more, employment insurance eligibility periods are limited and the garnishing procedure itself can take over 45 days. As such, processing these files should be considered a priority and perhaps even an urgent matter.

A memorandum of understanding entered into by the Support Payment Collection Department and the Centre de perception on May 3, 1999, states that the collection agent must institute the garnishing procedure within 48 hours. The Québec Ombudsman points out the problems with collection file processing priorities and laments the fact that very often, the debtor's employment insurance benefits have time to run out before a seizure is undertaken.

Any possibility of collecting arrears is often lost

The following complaint, received on May 29, 2000, serves as a good example. The ruling was handed down in October 1998 and the debtor had yet to make any payments. Though he had been an employment insurance recipient for several months, the Centre de perception fiscale put off making arrangements with the federal agency for the garnishing procedure. Time passed, to a point where the debtor was no longer eligible for employment insurance benefits and became a social assistance recipient.

In situations like these, the creditor often loses any chance of collecting arrears, particularly when the debtor starts working under the table or when he obtains a new ruling which retroactively cancels the support payments.

To prevent this type of situation from recurring, the Québec Ombudsman recommended that the Centre de perception fiscale give priority to executing garnishee summons which would allow the seizable portion of the employment insurance benefits to be withheld.

[illegible] means: the Québec Ombudsman notes [illegible] activity, the Centre de perception fiscale is [illegible] to properly fulfil its mandate.

Another of the Centre de perception fiscale's mandates is to collect the evidence required by the Legal Department in order to institute legal proceedings. However, after five years, the Centre is still ill-equipped to properly fulfil this mandate.

To carry out its duties effectively, the Department must be able to question different witnesses. To do so, the Department must have staff members working on the road. Despite several pilot projects that yielded excellent results, cutbacks forced the Centre to dismantle its "road" team. It is therefore not surprising that the Centre hesitates to take statutory legal action and that several appeals are delayed and even abandoned due to a lack of evidence.

Here is a case that speaks for itself. On May 18, 2000, a creditor filed a complaint with the Québec Ombudsman. A 1993 ruling established that she would receive $125 a week in support payments: however, she was never paid and the amount of arrears owed climbed to over $50,000. Even though the woman knew that her ex-spouse was working under the table and despite the fact that she provided her agent with the name and address of her ex-spouse's employer, nothing was done. She also provided a list of property that could be seized, indicating that it was fully paid for.

Ruling in 1993, more than $ 50,000 in arrears owed, and still no payment made in March 2001-09-20

The investigation revealed that the Support Payment Collection Department had sent the file to the Centre de perception fiscale who latter returned it marked "insolvent." The argument of the agent at the Centre was very clear: they could not catch the debtor in the act and needed more data to justify an in-depth investigation.

A recommendation made by the Québec Ombudsman in 1998 is still in the spotlight

The Québec Ombudsman insisted that the file be returned to the Centre de perception fiscale and that an in-depth investigation be conducted. The case was transferred to the Centre in July 2000. In March 2001, the Québec Ombudsman was informed that the woman still had not received any money and that, because the Centre still considered the debtor to be "insolvent," the case had been closed.

The Québec Ombudsman, however, continued to be bothered by a troubling fact. Not only was the Centre de perception fiscale short of staff, it did not have the means necessary to fulfil its mandate. In fact, even if, according to section 55[8] of the Act, collection agents are defined as examiners, they are not vested with the powers of investigating commissioners, as provided for in section 58.[9]

8. op. cit., note 1, section 55: "A person authorized by the Minister to act as an examiner may, to insure the recovery of an amount owed, require any information and any document, examine such a document and make a copy thereof."
9. op. cit., note 1, section 58: "The Minister or any person designated by the Minister as an investigator may carry out an investigation with respect to any fact or information relating to the recovery of an amount owed. For that purpose, the Minister and the investigator shall have the powers and immunity of a commissioner appointed under the *Act respecting public inquiry commissions* (chapter C-37), except the power to order imprisonment."

In his 1998[10] report, the Québec Ombudsman recommended that the ministère du Revenu examine the possibility of setting up an auditing unit for the specific purpose of collecting support payments, as provided for in Chapter VI of An Act to facilitate the payment of support. The Department's reply to this recommendation has always been that these investigations are carried out by staff members in charge of conducting tax audits. There are two reasons why this response is unacceptable.

First, support payment collection agents do not request the participation of tax auditors when an investigation is required. In fact, only the support creditor can call upon the tax auditing unit to denounce non-payment of support, and this is the only way to open an investigation. Knowing that the creditor never has any contact with the support payment collection agent—the one person who could suggest that the creditor blow the whistle on the debtor—we can logically conclude that few "support payment" cases are forwarded to the auditing unit.

Second, the tax agents are compelled to keep any investigations underway strictly confidential. Therefore, they never inform the creditors of investigation requests or results.

The Québec Ombudsman recommended that the ministère du Revenu ensure that the auditing unit and the Centre de perception fiscale adopt a policy pertaining to the transfer of support payment cases for the purpose of conducting an investigation. Furthermore, it also recommended that the auditing unit be required to provide the Centre de perception with a report on the investigation proceedings and results.

At the Legal Department

Accumulation of delays in collection procedures not only [illegible] consistency with the law's objectives, but also respect for the rights of creditors.

While it is true that the system makes collecting support payments easier and improves the life of creditors when payments are made through source deductions or payment orders, an entirely different story comes to light when the ministère du Revenu must resort to legal means.

The Legal Department represents the ministère du Revenu when the latter must act as the garnishor on behalf of the support creditor. In its role as garnishor, the Legal Department institutes proceedings before the court, armed with the evidence collected by the Centre de perception fiscale.

10. op. cit., note 3, pages 10 and 19.

The investigations conducted by the Québec Ombudsman in regions which fall under the jurisdiction of the Montréal Legal Department revealed that staff shortages often caused serious delays in some cases.

The seizure of support debts is often seriously delayed because of staff shortages

The following case speaks for itself. A woman was granted the right to support payments for her daughter. Although the order was issued in 1991, the debtor had yet to pay a dime and the arrears owed now totalled $250,000. All of the latter's property belonged to different companies—nothing was in his own name.

In 1992, the woman called upon the ministère de la Justice, who acted as collector at this time. After questioning and conducting an investigation, the ministère de la Justice ceased all efforts to recover the support payments. In 1996, the case was transferred to the ministère du Revenu. The Support Payment Collection Department quickly forwarded the file to the Centre de perception fiscale who then carried out seizures at several financial institutions. The debtor contested the seizures, and the case was then handed over to the Legal Department which granted a discharge from seizure due to lack of sufficient evidence. The file was then returned to the Centre de perception.

In the spring of 1998, given the debtor's continued refusal to respect the order, the Centre once again handed the case over to the Legal Department so that the latter could take steps to find the debtor in contempt of court.

The whole process, however, was put on hold. The woman called upon the Québec Ombudsman who regularly contacted the Centre de perception for information on the case's progress. It finally learned that the motion would be heard on December 15, 1999. In February 2000, the Québec Ombudsman contacted the Centre de perception to find out what came of the hearing. The Québec Ombudsman was shocked to learn that no hearing had taken place and that the Legal Department would soon be sending the case back. The agent claimed that nothing more could be done to meet the requirements of the Legal Department.

The Québec Ombudsman intervened and the case remained in the hands of the Legal Department. In May 2000, the lawyer informed the Québec Ombudsman of an upcoming meeting during which they would determine what steps could be taken in the case. A month passed and the meeting still had not taken place. The lawyer—alone and overwhelmed with work—still had not taken care of the case. Six months later, in December 2000, the motion for contempt of court was finally filed.

As this case clearly illustrates, by the time a case finds itself in the hands of the Legal Department, many steps have already been taken and a lot of time has passed. When

delays in collecting support payments continue to accumulate, the objectives of the law and the rights of creditors are compromised.

The harm caused to creditors is all the more serious given that An Act to facilitate the payment of support is considered to be of a public nature[11]. This means that only the ministère du Revenu can use collection measures to recover support payments and arrears. Support creditors do not have the option of instituting proceedings if the Department's interventions turn out to be fruitless.

The Québec Ombudsman recommended that the ministère de la Justice and the ministère du Revenu join forces and take action to properly enable the Legal Department's staff—responsible for recovering support payments—to act more promptly.

One step closer: the Minister of Revenue has introduced a bill designed to provide solutions to the various application and interpretation problems inherent in the support payment collection plan

On May 8, 2001, the Minister of Revenue introduced Bill No° 9—An Act to amend the Act to facilitate the payment of support—to the National Assembly. The proposed amendments are in keeping with the Québec Ombudsman's numerous interventions regarding the support payment collection system and thus include the modification of certain recovery methods as well as additional methods.

The Québec Ombudsman expects to monitor the development of this bill and examine its effects on citizens. It also intends to keep a close watch on the application of the system and continue to expose detrimental situations and require that improvements be made in the interests of citizens.

11. op. cit., note 1, section 72.

2.1.8

LE MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX

LE MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX

The ministère de la Santé et des Services sociaux determines the main priorities, objectives and guidelines pertaining to health and social services. It oversees their application and assessment. Its main role consists of defining province-wide health and welfare objectives and overall policies. It must ensure equitable allocation of resources among the regions, their efficient use and inter-regional co-ordination of services. The Department approves regional priorities and regional service organization plans. Finally, it ensures the co-ordination of teaching and research, and is responsible for protecting public health.[1]

During its interventions, the office of the Québec Ombudsman addresses the staff of the ministère de la Santé et des Services sociaux and sometimes the staff of institutions of the network and regional health boards to obtain the information required to analyze citizens' complaints. The vast majority of complaints selected for investigation point to a breach in the application of the law, a regulation, a policy, a program, a directive, a memorandum or other interpretative document issued by the Department and used or administered by the network's institutions.

The Québec Ombudsman is not empowered to intervene in matters concerning action and lapses on the part of the staff and the management of the network's establishments. Such requests are referred to those persons in charge of reviewing citizens' complaints within the network. Over the course of the year, the Québec Ombudsman received 1,337 requests for intervention deemed to be outside its jurisdiction.

One practice denounced by the Québec Ombudsman has been remedied: the income of the spouse of an accommodated person, from whom the spouse is legally separated, but not divorced, is no longer taken into consideration in the calculation of the accommodated person's contribution.

The Québec Ombudsman's 1999–2000 Annual Report documented complaints received concerning the matter of adults who are accommodated in network establishments. The Québec Ombudsman deemed that the amounts demanded were abusive and unfair. He also submitted this opinion to the committee composed of civil servants of the Régie de l'assurance maladie du Québec and the Department, mandated to review the regulations governing the contribution to accommodation.

The committee finally agreed to correct a practice denounced by the Québec Ombudsman, agreeing to no longer consider the income of the spouses from whom they are legally

1. MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX [www.msss.gouv.qc.ca], 2001.

separated but not divorced in the calculation of accommodated persons' contributions. Because of this change, accommodated persons are no longer required to prove that they have not had a relationship with their spouses for a period of at least five years. Henceforth, no contribution will be required from the non-accommodated spouse.

The committee is pursuing its work on the other issues raised by the Québec Ombudsman.

Additional amounts are paid by the Department in support of services for autistic and dysphasic persons following the Québec Ombudsman's.

The Québec Ombudsman indicated in his last Annual Report that he had notified the ministère de la Santé et des Services sociaux of complaints received from the parents of autistic and dysphasic children who must wait several months before obtaining services in treatment centres. He stressed the importance and the urgency of early intervention with such children. More specifically, the Québec Ombudsman reported 75 dysphasic children then awaiting services in the Québec City region. Furthermore, he pointed out that the budgets for the organization of services for autistic children were located in the envelope designated for intellectual disabilities, which includes all budgets allocated to services provided to children and adults alike. The organization of services for autistic children thus varies depending on where it ranks in each regional board's priority list.

Services for autistic children vary across regions

The Department confirmed with the Québec Ombudsman that there are regional disparities concerning access to services because a number of regional boards have developed planning whereas others have yet to do so, and some boards allocate more money to these services than others.

Furthermore, the Department specified that it paid additional amounts for the development of appropriate services to the regional boards for the year 2000–2001. Nevertheless, these amounts are still part of the overall envelope allocated to intellectual disability. However, the Department asked the regional boards to pay specific attention to the needs of autistic persons.

The Québec Ombudsman thus urged parents to continue to take steps with the regional decision-making bodies responsible for allocating resources and organizing services so that the needs of their children are met.

The Québec Ombudsman is concerned about respect for users' basic rights.

Over the past year, the Québec Ombudsman's interventions have mainly concerned persons who are vulnerable in their relations with the ministère de la Santé et des

Services sociaux and network establishments, namely: the elderly, persons with mental health disabilities or problems and accommodating families lacking adequate resources for defending their rights with respect to network establishments.

The Québec Ombudsman has been concerned about respect for the basic rights of users who do not always receive the services they require for their condition, disability or age, and for whom exercising rights is often difficult.

Exploitation of elderly people: the Québec Ombudsman submitted a brief to the Commission des droits de la personne et des droits de la jeunesse

In March 2000, during a public consultation on the exploitation of elderly people, the Québec Ombudsman submitted a brief entitled "Countering Exploitation and Abuse Through the Elimination of Risk Factors" to the Commission des droits de la personne et des droits de la jeunesse.

The brief identified several risk factors likely to lead to the exploitation of elderly persons: lack of knowledge on the part of elderly persons or of third parties about various forms of exploitation, the exhaustion of persons providing care to elderly persons living at home or in an institution, inadequate resources in long-term care facilities, which, according to the Québec Ombudsman, may constitute a breach of the basic rights of accommodated persons while creating a climate conducive to violence, as well as the lack of regulations governing private accommodation facilities.

Risk factors for the exploitation of the elderly

The Québec Ombudsman formulated recommendations addressed to the Commission des droits de la personne et des droits de la jeunesse, calling on it to assume a leadership role in the fight against the exploitation of the elderly and to act on such risk factors.

Leadership must be assumed

The Québec Ombudsman also submitted several recommendations to the ministère de la Santé et des Services sociaux so that it would undertake the means to ensure that persons losing their autonomy receive the services and the care their condition requires, whether they live at home, in a private residential facility or in a public establishment. Thus, the Québec Ombudsman called on the Department to force residences that accommodate elderly persons losing their autonomy to obtain an operating permit, to strengthen the inspection powers of regional boards and to review the safety standards governing residences that accommodate fewer than 10 persons.

Corrective measures recommended for the complaints-processing procedure

The Québec Ombudsman also recommended corrective measures to the Department to make the complaints-processing procedure more accessible to this client group and to thereby ensure better protection of the rights of persons losing their autonomy who are accommodated in the public network and in the private sector.

The ministère de la Santé et des Services sociaux responded to the Québec Ombudsman's brief by stating that it was initiating work to clarify the roles and the responsibilities of the interveners concerned by abuses committed on the elderly. This work is being undertaken to complement the work of the inter-ministerial committee, acting under the control of the Seniors' Secretariat, whose mandate is to recommend an action plan for elderly and retired persons. Furthermore, the Department undertook the development of a frame of reference for the organization and the delivery of care and services in residential long-term care centres. This frame of reference aims to improve quality of life for the residents.

The residents of long-term care centres in one region should not have to bear the effects of network reorganization and budget cuts with more difficulty than those in another region.

53% of needs met whereas the average is 73%

In May 2000, the representatives of a grouping of residential long-term care centres (RLTCC) called on the Québec Ombudsman with respect to the matter of under-funding of establishments that accommodate elderly persons with severe loss of autonomy. The representatives maintained that because of this under-funding, they could only meet approximately 53% of the needs of this client group, which is clearly inferior to the provincial average established at approximately 73%.

A committee to seek a sustainable solution

After having analyzed the situation, the Québec Ombudsman notified the Health and Social Services Minister of the following observations:

- In all the grouping's establishments, the lack of nursing staff is glaring, which means that the care dispensed to the residents is limited to basic needs: getting up and going to bed, toilet, meals and baths;
- There is not enough staff to ensure adequate physical monitoring of the beneficiaries during certain periods of the day;
- The lack of professional personnel means that residents do very little exercise and that their physical state rapidly deteriorates;
- The lack of personnel generates significant costs in human and professional terms for the staff on site. A sharp rise in prolonged absences caused by professional burnout is noted.

The Québec Ombudsman pointed out to the Department that the residents of the establishments represented by the grouping, as well as those of other RLTCCs in the region, should not have to endure the impacts of network reorganization and budget cutbacks more severely than those in other regions. The Québec Ombudsman asked to be informed of the results of a process to be undertaken to correct the situation of RLTCCs in this region.

The Department mandated a committee to study the situation and to propose a sustainable solution that would rapidly improve the living conditions of the residents of the establishments of this grouping of RLTCCs. The committee's mandate was extended to other long-term care accommodation centres in the territory of the regional health and social services board of the region. The committee concluded its work at the end of the summer in 2000.

In January 2001, the ministère de la Santé et des Services sociaux informed the Québec Ombudsman that it had added $12M for Québec long-term care RLTCCs in December 2000 and that the region targeted by the investigation had received $2.6M.

An additional $12M for Québec's long-term care centres

The representatives of the grouping confirmed that the additional amounts represented approximately $1.5M on an annualized basis. This amount should enable it to meet 63.4% of needs. This is a step in the right direction but it is still shy of the provincial level of 73%.

Status of a group of accommodating families changed without taking established regulations into account: they worry about their survival

The Québec Ombudsman intervened at the request of persons in charge of accommodating families with contractual ties to a rehabilitation centre who were compelled, by the institution's administration, to sign a new contract making them an intermediate resource. This change in status had significant consequences: their income became taxable while the per diem paid by the institution remained unchanged. Moreover, they had to meet obligations as self-employed workers and became the employers of the persons with whom they worked.

In the Québec Ombudsman's view, it is unacceptable that the establishment use its power to change the status of these persons while failing to comply with the regulations established when a resource is recognized—the evaluation of the resource, the intensity of the services required by the beneficiaries and the establishment of the compensation.

New contracts signed

The Québec Ombudsman asked the ministère de la Santé et des Services sociaux to examine the situation of these accommodating families in order to recognize their true status. He called on the Department to reach an agreement with the ministère du Revenu to prevent these persons from having to assume the responsibilities of an employer for the duration of the resource contract.

The Department finally offered to annul the disputed contracts and to sign new contracts with the persons concerned, in which they would be considered to be accommodating families. Clauses were added to stipulate that the rehabilitation centre concerned and the Québec City regional board would provide support in any situation arising from a later recognition of the status of employer and that the representations would be made for this purpose to the ministère de la Santé et des Services sociaux.

The Québec Ombudsman before the Clair Commission: some important issues.

In October 2000, the Québec Ombudsman appeared before members of the Clair Commission[2] to present a brief entitled "The need to work with citizens to find a balance between ethical and budgetary choices." The commission's mandate was to hold public debate on the issues facing the health and social services system and to recommend solutions mainly concerned with two aspects—funding and the organization of services.

The Québec Ombudsman recalled that the various reforms to the health and social service system had intended to put users and their rights at the core of the system, based on respect for the values of accessibility, universality, providing services free of charge, and continuity of services.

He claimed that the less fortunate are the hardest hit by the network's inability to offer all required care and services within an acceptable period of time. Waiting lists, paying fees for the private sector for want of access to the public network and the imposition of fees for services that were formerly free of charge indicate a lack of respect for the system's fundamental underlying principles.

The Québec Ombudsman pointed out to the Commission the necessity for assessing the application of fundamental principles and for undertaking discussions with citizens on ethical considerations in the choice of care and sevices to be provided to users.

2. Commission d'étude sur les services de santé et les services sociaux mandated by the Government of Québec on June 15, 2000.

Moreover, according to the Québec Ombudsman, the mechanisms for consultation and the expression of the rights of users provided for in An Act respecting health services and social services (complaint handling system, users committees, assistance and accompaniment organizations) are a privileged source of information that is available to decision-makers, since these tools can contribute to feeding a comprehensive, ongoing discussion on the organization of services, their improvement, and the funding of the network.

These mechanisms also foster quality control of care and services. They must therefore be stable, permanent, credible and contain relevant information in order to contribute to the improvement of the system and to enable users to exercise their rights adequately.

The Québec Ombudsman formulated a series of proposals to the Commission, as well as to the ministère de la Santé et des Services sociaux, to improve the complaint-processing procedure for users, including the implementation of an external, independent system of recourse. He also recommended that the person responsible for complaints be able to intervene on his own initiative.

2.1.9

LE MINISTÈRE DE LA SÉCURITÉ PUBLIQUE

LE MINISTÈRE DE LA SÉCURITÉ PUBLIQUE

"The mission of the ministère de la Sécurité publique is to ensure a safe environment, essential to the full and complete exercise of individual rights and freedoms and conducive to the development of individuals and the community. This broad mandate hinges on three main areas of intervention: enforcing laws and regulations governing the life of the society within its jurisdiction; providing courts with relevant advice; applying their decisions against persons who break the law while promoting the social reintegration of offenders in both closed and open environments, in co-operation with community resources; ensuring the protection of persons and their livelihood in the event of major disasters or catastrophes."[1]

Though large detention centres account for 65% of available spaces, they are the source of 71.3% of requests for intervention made to the Québec Ombudsman. Problems pertaining to access to and quality of health care continue to be the greatest source of dissatisfaction this year, representing 27.3% of requests for intervention. Next in line are problems relating to the transfer of inmates (8.4%), temporary absence (7.7%), classification of inmates (5.9%) and loss of personal effects (5.7%).

Justified complaints are mainly related to the complaints handling system (with 70% of these cases undergoing an investigation), loss of personal effects (68%), healthcare administration (32%), improper sentence management (31%), transfers causing prejudice (30%), inadequate living conditions (27.4%) and poor classification of inmates (25% of cases investigated).

550 justified complaints

The Québec Ombudsman's special report on Québec Correctional Services, published in January 1999, focused on the fact that Québec prison administration and management require a great many corrective measures.

Following the release of this report, an action plan was drawn up by the Department. Representatives from Correctional Services and the Québec Ombudsman's office now meet periodically to review the implementation of the report's recommendations. As well, cooperation between these two organizations has taken the form of a mechanism to ensure more frequent exchanges.

The Department accepted the Québec Ombudsman's recommendation that a committee be formed with representatives from both the Québec Ombudsman's office and Correctional Services. Created in October 1999, this committee was mandated

1. MINISTÈRE DE LA SÉCURITÉ PUBLIQUE [www.msp.gouv.qc.ca], 2001.

with evaluating the complaints handling system implemented in detention centres in 1992. The committee has pursued work all year and expects to release its report in the fall.

The healthcare issue remains a problem.

In the last year, the Québec Ombudsman noted that access to psychiatric and psychological consultation in the majority of detention centres was particularly difficult to secure. A memorandum of understanding, entered into by the ministère de la Santé et des Services sociaux and the ministère de la Sécurité publique in 1989, aims at providing inmates with the same healthcare services as the rest of the population. However, the majority of service agreements between detention centres and CLSCs or private clinics do not include measures that provide inmates with access to a psychologist or social worker.

It is important to recognize the genuine effort Correctional Services has made to attenuate the negative effects of imprisonment on those suffering from mental health problems. Even before the coroner's public inquiry on the circumstances surrounding the death of a Rivières-des-Prairies inmateædiagnosed with paranoid schizophreniaæwho suffered a cardiopulmonary arrest following a physical intervention, Correctional Services had attempted to alert the ministère de la Santé et des Services sociaux and the Conseil du Trésor of the need for a solution to the problem of treating inmates who suffer from mental illness. On March 22, 2001, following the tabling of the coroner's inquiry report, the government announced the creation of an interdepartmental committee headed by the ministère de la Sécurité publique and mandated to coordinate the implementation of recommendations made by the coroner. The Québec Ombudsman is pleased with this initiative.

A committee mandated with implementing measures for improvement

Other long-term problems: drug abuse, suicide and idleness.

The Québec Ombudsman laments the fact that there has been little progress in the fight against drug abuse. Moreover, the suicide rate in detention centres remains unchanged since 1999. Concerned by the situation, the Direction générale des services correctionnels [correctional services' general management] intensified suicide prevention plans. As such, in the last year, it conducted an in-depth analysis of every report concerning a suicide in a detention centre. These steps enabled it to better define the problem and identify measures to counter it.

Suicide prevention a main concern

Inmate idleness is another significant problem. The Québec Ombudsman has, however, noted some progress. The Direction générale des services correctionnels now has a summary of the activities offered to inmates in each detention centre. This summary contains information for negotiating memorandums of understanding with the ministère de l'Éducation and the ministère de l'Emploi et de la Solidarité sociale in order to develop activities for inmates.

Efforts to counter idleness

The St-Jérôme detention centre, for example, has reached agreements with the region's school board so that, through occupational work, inmates may earn attestations of participation in occupational training issued by this particular school board. In addition to the traditional courses offered, other types of training, educational and awareness-raising courses were set up. These include socioprofessional integration sessions as well as workshops on problem-solving and communication. Other detention centres, like the Rivière-des-Prairies and Sorel detention centres, are currently implementing similar programs. The Québec Ombudsman can only express delight with the measures being implemented and hopes that other centres will follow suit.

The Québec Ombudsman has repeatedly denounced inmate classification problems.

The Direction générale is currently examining this particular issue but, until solutions are provided, inmates will continue to suffer from the adverse effects of classification problems.

To illustrate, we need only point out that an inmate can be transferred to a less-privileged sector when he displays behavioural problems and that he is permitted to request a re-evaluation of his classification after being incarcerated in his new sector for one month. When his request is accepted, he can return to his original sector.

Inmates are forced to wait: the Disciplinary Committee is too busy

As such, several offenders from the St-Jérôme detention centre complained to the Québec Ombudsman about the length of time it takes the classification committee to convene and study their transfer requests. The investigation revealed that the members of the Classification Committee served on three different committees altogether and that priority was given to the Disciplinary Committee and the Temporary Absence Committee. This situation was remedied but inmates were left with no other choice but to wait.

In its special report on Correctional Services released in 1999, the Québec Ombudsman recommended that all staff members receive continued training on the laws, policies and guidelines to which the Direction générale des services correctionnels must adhere. The two following cases clearly illustrate the need for such training.

In the first case, an inmate was suspected of concealing a substance in his mouth, which he refused to hand over. The agent therefore decided to try and take the substance from the inmate using a method known as the "stranglehold." The inmate called upon the Québec Ombudsman to denounce the agent's use of this method. The detention centre's authorities agreed to conduct an administrative inquiry into the incident.

Inappropriate search method

The inquiry report clearly established that this type of hold was no longer used—notably by the Correctional Service of Canada—because of the risk of throat injury. What's more, the report also identified many problems pertaining to the clarity of guidelines for this type of situation. According to the guidelines for searches, oral searches can only be of a visual nature. The agents involved in this incident, however, felt that they had conducted a simple and routine detention centre search.

An inmate is deprived of his right to be heard

Moreover, if the staff members had the right to place the inmate in preventive segregation, the latter also had the right to be heard by the agent's immediate superior. However, in this particular case, the immediate superior approved of the agent's physical intervention, and this prevented the inmate from exercising his right to be heard.

A clear definition of expected agent behaviour

Overall, this intervention clearly demonstrated a lack of planning and, most notably, a lack of operational management. The unit manager is compelled to coordinate operations and ensure—given that he personally intervenes—that everything is done safely and according to the rules.

The Québec Ombudsman's intervention allowed Correctional Services to clarify the situation and define the type of behaviour they expect of agents in the future. In fact, according to the conclusions and recommendations of the inquiry report, the authorities must ensure that staff members are well informed of the instructions, that knowledge of intervention techniques is continually updated and that this type of incident be reported to the concerned Deputy Minister.

In the second case, an inmate from the Chicoutimi detention centre was granted temporary absence after having served a sixth of his sentence. However, after failing to respect a particular condition, the inmate was returned to the detention centre. He then received an additional five-month sentence for impaired driving, which he would be forced to serve concurrently with his initial sentence. After having served a sixth of this new sentence, the inmate once again requested a temporary absence. The centre refused to examine his request and informed him that, according to a specific guideline, he would have to serve another 60 days before again being eligible for a temporary absence. The inmate therefore asked the Québec Ombudsman to look into the matter.

The Québec Ombudsman's intervention results in the examination of a request for temporary absence

After verification, the Québec Ombudsman pointed out that An Act respecting correctional services[2] stipulates that an inmate is eligible for temporary absence upon having served one-sixth of the term of imprisonment imposed by the court. The committee therefore examined the inmate's request for temporary absence and forwarded its recommendation to the Administrator, as provided for in the Act.

2. *An Act respecting correctional services*, R.S.Q., c. S-4.01.

2.1.10

LE MINISTÈRE DES TRANSPORTS

LE MINISTÈRE DES TRANSPORTS

"The mission of the ministère des Transports is to ensure the circulation of persons and merchandise through the development, setting-up and exploitation of infrastructures and of integrated transportation systems that are safe and reliable, and that contribute to the economic and social development of Québec and its regions."[1]

On occasion, the Québec Ombudsman may—for [illegible] suggest that the government administration waive a [illegible] when its application is likely to have harmful or [illegible]

A citizen received a claim from the ministère des Transports of over $1,000 for damage her spouse caused to the road system at the time of an automobile accident resulting in his death. Completely caught off guard by the Department's claim, the citizen asked the Québec Ombudsman to look into the matter.

According to section 108 of the Automobile Insurance Act[2], the owner of an automobile is liable for the property damage caused by his automobile during a road accident. However, the Québec Ombudsman noted that the policeman's report did not clearly indicate who was responsible for the accident in this case. Furthermore, the inquiry revealed that the woman—a single mother of three young children and an employment-assistance recipient—had not received any life insurance benefits or any indemnities from the Société de l'assurance automobile[3] following her spouse's death.

In fact, the citizen's mistake had been to accept a succession that was lower than it should have been. Obviously, she did not have the means to pay the $1,000, and disbursing this amount would have placed her family in serious difficulty. In all fairness, the citizen could not be asked to make the payment.

The Québec Ombudsman pointed out to the ministère des Transports that, even if all citizens are equal in the eyes of the law, there are cases where applying a regulation can have disproportionate effects because of specific circumstances. The Department agreed with this argument and quickly cancelled its claim.

Debt cancelled

1. MINISTÈRE DES TRANSPORTS [www.mtq.gouv.qc.ca], 2001.
2. *Automobile Insurance Act*, R.S.Q., c. A-25.
3. The right to an indemnity, as provided for in the *Automobile Insurance Act*, is currently being disputed before the proper court.

2.2

AGENCIES

2.2.1

LA COMMISSION DE LA SANTÉ ET DE LA SÉCURITÉ DU TRAVAIL

LA COMMISSION DE LA SANTÉ ET DE LA SÉCURITÉ DU TRAVAIL

The Commission de la santé et de la sécurité du travail administers the occupational health and safety plan. It is mandated with compensating and rehabilitating workers who have suffered from employment injuries or diseases. The Commission is also responsible for the crime victims compensation plan. In addition, it handles the prevention and inspection of occupational health and safety, and compensation for pregnant or nursing workers in preventative leave from work.

Moreover, the Commission oversees the application of several laws including the Government Employees Compensation Act, An Act to promote good citizenship and An Act respecting indemnities for victims of asbestosis and silicosis in mines and quarries.

THE HARMONIZATION OF PROGRAMS

Occupying a privileged position, the Québec Ombudsman has a unique vantage point from which to observe the departments and agencies it investigates. As such it is able to reveal the negative consequences on citizens arising from the problems inherent in the harmonization of certain government programs. The following example clearly illustrates the situation.

According to the Québec Ombudsman, the fact that the transfer of money between the Régie and the Commission adversely affects workers is neither justifiable nor fair.

A worker can turn to the Régie des rentes du Québec when the Commission de la santé et de la sécurité du travail refuses to recognize him as a victim of employment injury. In this case, if the Régie recognizes his disability, the worker is entitled to receive a disability pension.

The worker can ask the Commission to review a decision to refuse an indemnity. As such, the Commission may change its initial decision and agree to pay the worker an income replacement indemnity. In this case, the disability pension paid out by the Régie is deducted from the amount of the income replacement indemnity because the worker cannot receive these two benefits during the same period. The Commission then forwards the deducted amount to the Régie, the Régie terminates disability pension payments and the situation is settled.

If a worker or employer is dissatisfied with the decision rendered by the Commission de la santé et de la sécurité du travail after review, he can appeal to the Commission des

lésions professionnelles. In fact, it was at this point that one particular worker faced a problem—the appeals court reinstated the initial decision by the Commission de la santé et de la sécurité du travail to reject payment of the indemnity to the worker.

In fact, given the circumstances and based on an administrative agreement, the Commission de la santé et de la sécurité du travail recovered the money it had reimbursed the Régie des rentes upon reviewing its initial refusal to pay the worker an income replacement indemnity. However, according to tax rules, a disability pension paid out by the Régie is taxable but an income replacement indemnity paid out by the Commission is not. As a result, the Régie issued the worker a statement for tax purposes justifying the amount disbursed to the Commission and, in doing so, the amount transferred between the two agencies was once again considered as taxable income for the worker.

In reality, transferring the money between the two agencies had the same effect as taking back part of the indemnity the worker had received in good faith. In fact, An Act respecting industrial accidents and occupational diseases[1] clearly stipulates that indemnities paid to a worker in good faith by the Commission cannot be recovered, even if the decision granting the right to the indemnities is reversed.

According to the Québec Ombudsman, the fact that the transfer of money between the Régie and the Commission adversely affects workers is neither justifiable nor fair. The Québec Ombudsman feels that the administrative procedures must be harmonized to comply with the underlying legislation.

The Commission de la santé et de la sécurité du travail accepted the Québec Ombudsman's point of view. It no longer claims reimbursement from the Régie, and workers no longer suffer fiscal inequity arising from such a transfer of funds.

Thanks to the Québec Ombudsman's intervention and perseverance, the [illegible] home assistance services are now protected by [illegible] industrial accidents and occupational diseases.

Workers who provide home assistance services within the health and social services network are paid by the beneficiaries who receive amounts for this purpose from the establishments of the ministère de la Santé et des Services sociaux. The beneficiaries are therefore considered to be employers.

A pay management system called "Chèque Emploi-Service" or Employment-Service Cheque was implemented to simplify administrative tasks for beneficiary-employers and to allow workers to enjoy the same benefits as other employees. As such, this service

1. *An Act respecting industrial accidents and occupational diseases*, R.S.Q., c. A-3.001.

handles the remuneration of workers for beneficiaries. It makes tax deductions and all other required deductions and pays the salary owed to workers.

In 1999, the Québec Ombudsman received several complaints from workers who had been injured at work, while providing home assistance services, and whose claims had been rejected by the Commission de la santé et de la sécurité du travail, the latter stating that the workers were not legally covered in their particular situation.[2] Since that time, the Québec Ombudsman has met with the Commission on several occasions for the purpose of granting the 7,600 workers concerned the protection offered by An Act respecting industrial accidents and occupational diseases.

After two years of negotiation, the Québec Ombudsman is happy to state that the Commission and the ministère de la Santé et des Services sociaux have entered into an agreement for this purpose. As such, since January 1, 2001, workers who provide home assistance services have been eligible for protection under this plan. Moreover, the Québec Ombudsman welcomed the publication on January 17, 2001, of the draft regulation[3] which gives effect to this agreement and which reaffirms its position in this matter.

An unclear form leads to the miscalculation of the indemnity payable to workers.

A worker who suffers from an employment injury resulting in a period of incapacity of over 14 days must fill out the claim form. This form serves, among others, to inform the Commission de la santé et de la sécurité du travail of the worker's actual family situation. If the claim is accepted, the Commission pays the worker 90% of his net income. When calculating the worker's income replacement indemnity, the Commission takes into consideration any tax deductions for dependants. It is therefore highly important to correctly establish one's family situation.

When filling out the form, workers are asked to check the box that corresponds to their family situation, as it has been established for taxation purposes. However, only one space on this form was provided for indicating the number of dependants. As a result, many workers used this space to indicate their civil status—either single, married or divorced—failing to indicate the number of dependants. Obviously, this could lead the Commission to underestimate the amount of the indemnity to be paid out, especially since the latter did not systematically call upon workers to validate the information contained within the form.

Form modified

As a result of the Québec Ombudsman's intervention, the Commission modified the form so that workers would be able to enter all of the information required to correctly establish the indemnity to which they are entitled.

2. op.cit, note 1.
3. Draft *Regulation respecting the implementation of the agreement on any program of the ministère de la Santé et des Services sociaux*, 2001, G.O. 2, 535.

COMPENSATION FOR CRIME VICTIMS

The Direction de l'indemnisation des victimes d'actes criminels [crime victims compensation department] is mandated with analyzing crime victims' eligibility for compensation, medical assistance and rehabilitation.

The following example shows that a number of errors may sometimes arise within the same case.

According to the Québec Ombudsman, there were no new developments to justify modification of the decision. Furthermore, in the name of impartiality, when a decision is challenged, a person involved in making the initial decision cannot be assigned the task of reviewing it.

Measures for placing the victim defined on three separate occasions

In May 1994, the psychiatrist treating a child who suffered from sexual abuse diagnosed a severe behavioural disorder and recommended that the child be placed in a treatment centre. In May 1995, the Direction de l'indemnisation des victimes d'actes criminels accepted the claim advanced by the child's parents a year earlier. Then, in August 1995, the psychiatrist added that the victim's problems stemmed largely from the abuse he had suffered.

In October 1995, another psychiatrist confirmed the need to place the child in a treatment centre and recommended that the Direction examine the appropriateness of covering the related costs. Then, in April 1996, following a psychological evaluation which also confirmed the previous recommendations, the Direction granted the parents the right to a reimbursement for the costs of placing their child in the treatment centre.

A clear policy

In July 1996, after discussion with a worker from the Direction, the agent handling the case decided to stop all payments, claiming that the expenses were not related to the abuse the child had suffered. The parents contested this decision. The case was re-examined in June 1997 by none other than the worker who had discussed the situation with the agent before the decision was contested. Not surprisingly, he maintained the refusal to reimburse the costs for placing the child in the centre. The parents therefore asked the Québec Ombudsman to examine the situation.

First of all, the Québec Ombudsman noted that, according to the policy on the reimbursement of special costs, accommodation expenses for a rehabilitation centre can be reimbursed when the consequences of a criminal act justify a person's stay. In the first place, it pointed out that the decision rendered in July 1996 could not be modified, given that the agency had not received any new information on the case. Furthermore,

the Québec Ombudsman is of the opinion that the overall medical evidence provided in this case clearly demonstrated that the need to place the child in an institution is a direct result of the abuse suffered.

Secondly, the Québec Ombudsman expressed shock over the fact that the worker, who played a role in the initial rejection of the reimbursement, failed to abstain—in the name of impartiality—from reviewing this decision after it had been challenged by the parents.

The Direction de l'indemnisation des victimes d'actes criminels admits that the agent should not have been involved in rendering a new decision in July 1996. Furthermore, it recognizes that the worker who participated in the discussion should have withdrawn when the time came to re-examine the case, given his initial involvement in the decision. Lastly, after having re-examined the medical evidence, the Direction agreed to reimburse the full amount of accommodation expenses.

2.2.2

LE CURATEUR PUBLIC

LE CURATEUR PUBLIC

The Public Curator monitors the protection of incapacitated persons entrusted to it by the tribunal, by ensuring their moral and material well being, administering their property, and in general, the exercise of their civil rights. It also supervises the administration of private protective supervision of incapacitated persons by examining the way in which private representatives oversee the protection of incapacitated persons and administer their property. Finally, the Public Curator temporarily administers unclaimed property on behalf of the government.

The Québec Ombudsman has intervened repeatedly over the course of the past year so that a permanent solution might be found for several problems.

The Public Curator is no longer required to fund its own [illegible] income persons that it represents may currently benefit [illegible]

Following an amendment to the Regulation respecting the application of the Public Curator Act[1] that came into force on April 1, 2000, the Public Curator no longer charges fees for activities related to the protection of persons. It may, however, require fees for managing property or supervising the administration of property entrusted to private representatives. Nearly 80% of the persons it represents have limited income and were at risk for being deprived of services aimed to ensure their protection when the Curator was compelled to fund its own activities by charging them fees. This regulatory amendment therefore enables the Public Curator to provide services to all persons it represents.

Despite a judgement rendered by the Court of Appeal, the problem of fees for the maintenance of clothing and personal bedding [illegible] to accommodated persons has not been settled

On April 15, 1999, in a declaratory judgement pertaining to laundering and maintenance of the clothing of accommodated persons, the Court of Appeal specified "that the respondents, home-care centres and long-term care centres, are obliged to provide their users with the regular laundering and maintenance of personal bedding and clothing at no cost."[2]

At the same time, the Comité provincial des malades undertook a class action through which it wished to show that the users of subsidized private and public home-care and long-term care centres did not receive free laundry service for their personal clothing. It asked for a monthly reimbursement of $40, for a period of 36 months for every user who did not receive this service free of charge[3].

[illegible] court will [illegible] to decide

1. *Regulation to amend the Regulation respecting the application of the Public Curator Act*, Order in Council 202-2000, March 1, 2000 [2000, G.O. 2, 1621].
2. Québec (Procureur général) c. Vigi Santé ltée* [1999] R.J.Q. 997 (C.A.), j. Brossard, Chamberland et Forget.
3. A hearing in this case is expected in the near future.

Since many persons who are represented by the Public Curator are likely to be affected by this situation, the Québec Ombudsman wanted to know what the Curator planned to do to ensure that the establishments respect the rights of users in this area. This intervention prompted the Public Curator to investigate practice in effect in 276 establishments likely to have billed laundry costs to persons it represents. The matter should soon be resolved when the Court renders its decision on the class action. The Québec Ombudsman is closely monitoring developments and will intervene as required.

[illegible] it represents for the cost of copying files, the Public [illegible] them of information on their personal situation.

In early 2000, the Québec Ombudsman observed that when persons whom the Public Curator represents requested a full of partial copy of their file, the latter billed them for the costs of copying these documents. The inability of represented persons, namely most of the Public Curator's client group, to pay these costs to access their own files deprives them of the right to information that concerns them. The Public Curator must ensure the safeguarding of the autonomy of the persons it represents and in the opinion of the Québec Ombudsman, it must not impede access to relevant documents that concern them by imposing access fees.

As a result of the Québec Ombudsman's intervention, the Public Curator annually provides, upon the request of a person he represents, a complete copy of his or her file including updates, free of charge.

[illegible] written in clear, easily understood language.

The Québec Ombudsman heightened the Public Curator's awareness of the difficulty that citizens have in quickly grasping the meaning of the message contained in his written communications. The Public Curator undertook to revise and improve the content of its 300 most frequently used form letters.

[illegible] democratic right,

During the federal elections of November 17, 2000, all incapacitated persons under a protective supervision plan were entitled to vote, whether they were under curatorship or tutorship This is an important democratic right.

The Québec Ombudsman noted that the Public Curator had not ensured that all the persons he represents had been registered on the electoral lists, nor that they could

exercise the right to vote. The majority of persons represented by the Public Curator live in the network of health and accommodation establishments. As well, according to the Québec Ombudsman, the Public Curator was also supposed to ensure that the directors of these establishments take the appropriate measures to enable the users he represents to exercise their right to vote. Furthermore, agreements were supposed to have been concluded with the various resources in the life community of these persons in order that they be informed of their rights and accompanied, if necessary, on election day.

The Public Curator confirmed with the Québec Ombudsman that he would secure the collaboration of the Chief Electoral Officers of federal and provincial elections, the chief executive officers of health and accommodation establishments and of certain community agencies committed to advocacy of citizens' rights. In this way, he wishes to facilitate the exercise of the right to vote for all persons that he represents.

According to the Québec Ombudsman, the rights of every person represented by the Public Curator must be respected, and the latter must make every effort to enable the exercise of such rights

After having examined the complaints lodged by a person represented by the Public Curator for several years, the Québec Ombudsman concluded that the latter did not ensure the exercise of this person's rights.

Requests for independant medical assessments and the assistance of legal counsel ignored

This person had been entrusted to the review board on mental disorders[4] by the court because it was declared that he was not criminally responsible for the charges brought against him. This is the board that was responsible for determining the decisions to be rendered concerning him. Every year, the commission reviews the person who is subject to such an order and determines whether the order should be maintained.

Before being heard at this annual review, this person explicitly asked the Public Curator to obtain a second medical assessment to be carried out by an independant physician. The Public Curator did not respond to this request. As well, the person unsuccessfully requested the assistance of legal counsel to take charge of defending his interests at the review board hearing.

Treatments without free and enlightened consent: an incapable person is refused the opportunity to submit an appeal

Furthermore the establishment that was accommodating this person, with the collaboration of the Public Curator, had secured from the Tribunal an order for treatment despite his categorical refusal. Thus, for two years, the staff was permitted to administer medication to and impose all sorts of treatment on the person without obtaining his free and enlightened consent. The Québec Ombudsman noted that the person had asked that this decision be appealed a request which the Public Curator had rejected.

4. The Administrative Tribunal of Québec, social affairs division, is designated as a Review Board on mental disorders within the meaning of section 672.38 of the *Criminal Code*.

In sum, this person was refused the opportunity to exercise more than one right, namely that of being heard again by the review board, after having been assessed a second time by an independent physician, that of being assisted by legal counsel and that of submitting an appeal for a decision that deprived him of respect for the integrity of his person. According to the Québec Ombudsman, the rights of every person represented by the Public Curator must be respected and the Public Curator must make every effort to enable the exercise of these rights.

An approach that is more mindful of respecting human rights

As the result of the Québec Ombudsman's intervention and that of class action, the Public Curator changed its course of conduct in order to promote an approach that is mindful of respecting human rights.

After having been heard again by the review board with a file that better reflected his reality, the person was released from the Criminal Court order and was directed to an accommodating family likely to meet his needs. Furthermore, the decision that authorized him to be treated without prior consent was rendered void.

The Public Curator is responsible for the protection of the property of the persons he represents and, according to the Québec Ombudsman, he must cover the cost of losses.

A photographer was determined to be incapable and the Public Curator was designated to represent him. In such a situation, he must retrieve the property of the incapacitated person and ensure its protection. As well, the Public Curator was supposed to retrieve the photographer's property—including professional cameras—store this property and protect it.

$25,000 paid to compensate for the loss of personal property

When this person's health improved, he reclaimed possession of his property and noted the absence of several cameras and lenses. The Public Curator had neglected to take an exhaustive inventory of the retrieved and stored property. He was therefore unable to confirm whether a number of items had disappeared after he had taken charge of them or whether he had never retrieved them in the first place. Feeling that he had been wronged, the citizen considered that the Public Curator must reimburse him $56,000 so that he could replace the missing equipment.

After several years of discussion, the Public Curator accepted the recommendation of the Québec Ombudsman. The citizen was granted the benefit of the doubt and the Public Curator reimbursed him $25,000 to compensate for the losses sustained.

The Québec Ombudsman's intervention will have made it possible to affirm the right of certain persons to obtain from the Public Curator a copy of documents that concern them.

The Public Curator is also vested with the mandate to ensure the supervision of the administration of curatorships or tutorships of persons of full age placed under the protection of legal representatives of persons determined to be incapable. To do so, the Public Curator Act[5], and the Civil Code of Québec stipulate that private representatives—tutors and curators—must transmit to the Public Curator an inventory of the property with which they have been entrusted, an annual report of their administration, a copy of the periodic assessment report on the person's incapacity at the end of each year in which it must be conducted, as well as a copy of their rendering of accounts.

Incapacitated persons must have access to the information that concerns them

On occasion, the legal representative of an incapable or protected person refuses to provide the latter with a copy of the documents that he has submitted to the Public Curator. As such, persons have asked the Public Curator, without success, to provide them with access to the documents concerning them and that have been submitted to the Public Curator by their private representative. The Québec Ombudsman was then called upon to intervene. For want of securing all the relevant information, these persons were concerned about the manner in which their private representative was overseeing the administration of their property.

When the Québec Ombudsman requested that the Public Curator justify his refusal to provide these persons with access to the personal documents, he rightly indicated that transmitting documents of which he was not the owner to third parties raised legal issues. He wanted to know the extent of his obligations before permitting access to the documents in question.

From the legal opinion that he received on the subject, it follows that in principle, the private mandatary must provide the person whom he represents—and this at least once each year—with a copy of his annual administration report. When he refuses to do so, the Public Curator may transmit a copy of the reports that he has received but only to the person with a property tutorship. Such a person maintains rights related to his person, including that of exercising his or her right of access to documents. However, persons placed under the protection of curators or tutors to the person cannot require a copy of these documents.

Obviously, the limits imposed by the Public Curator Act[6] raise problems. According to the Québec Ombudsman, the interest of all incapable persons—who are refused access to their files—provides justification for continued consideration on the part of

5. *Public Curator Act*, R.S.Q., c. C-81.
6. op. cit., note 5.

the Public Curator. The latter is mandated to supervise the way in which private representatives administer the property of the persons whom they represent and, in the opinion of the Québec Ombudsman, the Public Curator should be authorized to inform them of the results of his verification and to forward them the documents that he has analyzed. A legislative amendment will perhaps prove necessary. The Québec Ombudsman is monitoring the progress of this matter.

A [illegible]: the Public Curator respected the legal provisions that govern successions in the absence of a will.

A citizen contested the decision of the Public Curator who refused to comply with the testamentary wishes of a person verbally reported to an employee of a health establishment and a notary. The citizen maintains that the Public Curator was obliged to take into account the expression of the person's last wishes, even though she could not sign her will. For his part, the Public Curator asserts that he had to comply with the rules of law pertaining to the liquidation of a succession.

The investigation revealed that this elderly woman, while hospitalized, met a notary in order to prepare her will. She had elected to designate various charitable agencies as legatees. After having taken note of her wishes, the notary returned to his office to write up the document. When he returned to her bedside to have her sign the will, he noted that the woman was not in a state to confirm that he had correctly interpreted her wishes, or to sign the document. She died two days following this visit by the notary. The notary attempted to have the validity of the unsigned will recognized, but the court rejected this request.

Since the will was invalid, the succession became intestate and the property had to be vested to the persons stipulated in the Civil Code of Québec. This woman had no known family, and thus, no legal heirs. The Public Curator was therefore designated to ensure the temporary administration of her property and to liquidate the succession if no heirs came forward within the stipulated time.

The Public Curator complied with the law in this matter.

The Québec Ombudsman concluded that the Public Curator had complied with the legal provisions that govern the liquidation of succession and that he could not meet the request of the citizen to designate charities as legatees.

2.2.3

LA RÉGIE DE L'ASSURANCE MALADIE DU QUÉBEC

LA RÉGIE DE L'ASSURANCE MALADIE DU QUÉBEC

The Régie de l'assurance maladie du Québec administers the healthcare and prescription drug insurance plans. It manages about 40 healthcare and health service programs including medical and optometry services, and dental services for children and employment-assistance recipients. More than 7 million people hold a Québec health insurance card which provides access to health services. Of this number, 3.2 million benefit from prescription drug insurance.

Requests for intervention continue to be largely related to health insurance plan eligibility.

The Québec Ombudsman's proposal to implement a universal prescription drug insurance plan was accepted

On March 21, 2000, the Québec Ombudsman submitted several comments to the Commission des affaires sociales, mandated to examine the review of the prescription drug insurance plan. The previous Annual Report outlined its main findings and proposals. The Québec Ombudsman thus evoked the inequities in the plan since its introduction and suggested a more in-depth study of the possibility of implementing a universal prescription drug insurance plan. In February 2001, the Québec Ombudsman was pleased to see the establishment of a committee mandated to examine this issue.

The Régie cannot force citizens to provide irrelevant personal information in order to determine their right to a health insurance card

A citizen—back from a stay outside Québec for professional reasons—requested that his health insurance card be renewed. The Régie required that he send a copy of his work contract in order to verify the duration of his stay outside Québec. The citizen only provided the first page of the contract because he felt that the other parts contained personal information. The Régie refused to renew his card, claiming that they did not have sufficient evidence to establish the dates and length of his absence. Dissatisfied, the citizen called upon the Québec Ombudsman for help.

To register for the health insurance plan, citizens must meet the conditions outlined in the Health Insurance Act[1] and the Regulation respecting eligibility and registration of persons in respect of the Régie de l'assurance maladie du Québec.[2] According to section 5 of this regulation, a person must reside in Québec at least 183 days per year in order to be eligible.

1. *Health Insurance Act*, R.S.Q., c. A-29.
2. *Regulation respecting eligibility and registration of persons in respect of the Régie de l'assurance maladie du Québec*, R.S.Q., A-29, r. 0.01.

The Régie accepts Québec Ombudsman's point of view

The Québec Ombudsman concluded that the Régie was legally entitled to require an official document confirming the dates and the length of the citizen's stay outside Québec in order to establish the latter's right to renew his health insurance card. At the same time, it was not reasonable to require that the citizen provide personal information irrelevant to establishing eligibility. The Régie accepted the Québec Ombudsman's point of view and the citizen was asked to provide only the information needed to examine his application—an attestation from his employer providing the dates and duration of his work contract.

Children should not be penalized for parental conflicts. The Régie changes temporary means for allowing children access to medical care.

According to section 9 of the Health Insurance Act,[3] a single health insurance card is issued to each eligible person. In some cases, a parent who has custody of his child might not have this card in his possession because the other parent has refused to provide it to him. This is cause for a great deal of inconvenience and worry when a child requires care.

The Québec Ombudsman pointed out to the Régie that no child should be penalized in any manner whatsoever for a situation over which the parent who has this child in his custody has no control. In order to remedy this problem, the Québec Ombudsman suggested that the Régie issue an attestation of valid registration for the period during which the child requires care. The Régie accepted this compromise which allows children to receive care in a timely manner.

Payment of prescription drugs must be covered by the consumer of such drugs.

A citizen received an $850 bill from the Régie to cover the cost of prescription drugs. Feeling that this claim was unjustified, the citizen asked the Québec Ombudsman to look into the matter. Furthermore, the citizen feared that his health insurance card would not be renewed if he failed to pay the bill.

bill cancelled

The Québec Ombudsman's investigation revealed that the citizen had been a beneficiary of the prescription drug insurance plan but that he had recently changed to his employer's group insurance plan. Furthermore, he noted that the claim was for prescription drugs purchased by his ex-spouse while they were still living together. According to the Québec Ombudsman, the Régie was not justified in claiming the cost of prescription drugs that were not acquired for the citizen's personal use. The Régie accepted this opinion and the claim was cancelled.

3. op. cit. note 1.

2.2.4

LA RÉGIE DES ASSURANCES AGRICOLES DU QUÉBEC

LA RÉGIE DES ASSURANCES AGRICOLES DU QUÉBEC

The mission of the Régie des assurances agricoles du Québec[1] is to support the economic growth of agriculture while protecting the revenues of businesses against natural and market risks. The insurance offered to farmers are crop insurance and income stabilization insurance.[2]

According to the Québec Ombudsman, the [illegible] determining payable compensation was not consistent with [illegible] the regulation.

From March 10 to March 13 1999, a pig producer disposed of his sows. In technical terms, he proceeded with a "cleanout" because his herd was afflicted with a latent, recurring sickness.

The producer then asked the Régie des assurances agricoles du Québec to compensate his loss in compliance with the stabilization insurance plan. He noted that the Régie did not include the month of March 1999 in calculating the compensation. The Régie based its decision on an administrative procedure stipulating that the month in which a producer sells his sows is not insurable. Justification for this provision was based on the fact that no production occurred in this month, since the producer disposed of his animals.

After making unsuccessful representations to the Régie to have the month of March included in the calculation of the compensation, this producer called upon the Québec Ombudsman to intervene. Following an inquiry, the Québec Ombudsman concluded that the Régie was only bound by the Farm Income Stabilization Insurance Scheme[3] and that the administrative procedure must comply with the regulation in order to be valid. Such was not the case. In fact, when a producer stops contributing to the plan over the course of the insurance year, the regulation provides for the payment of compensation, prorata with the number of insured animals and months, and no period between the date of registration and the date of termination is excluded. The regulation also indicates that the Régie cannot shorten the insurable period when the insured meets the eligibility conditions—conditions with which this producer had complied.

Furthermore, according to the Québec Ombudsman, the reason for the herd's lack of productivity in the course of the month during which it was liquidated was questionable because the animals' gestation cycle means that birthing is sporadic over the course of the insurance period. Therefore, it is possible that no piglet births would occur. The Québec Ombudsman concluded that this administrative procedure was not consistent either with the facts or the regulation.

A new calculation [illegible] more than $2000 [illegible] to the producer

1. La Financière agricole du Québec, implemented by the *Act respecting la Financière agricole du Québec* (2000, c. 53) replaces the Régie des assurances agricoles du Québec and the Société de financement agricole effective April 1, 2001 in accordance with Order in Council 418-2001, April 11, 2001 [2001, G.O. 2, 2597].
2. RÉGIE DES ASSURANCES AGRICOLES DU QUÉBEC [www.gouv.qc.ca], 2001.
3. *Regulation respecting income stabilization schemes*, Order in Council 793-95, June14,1995 [1995, G.O. 2, 2617].

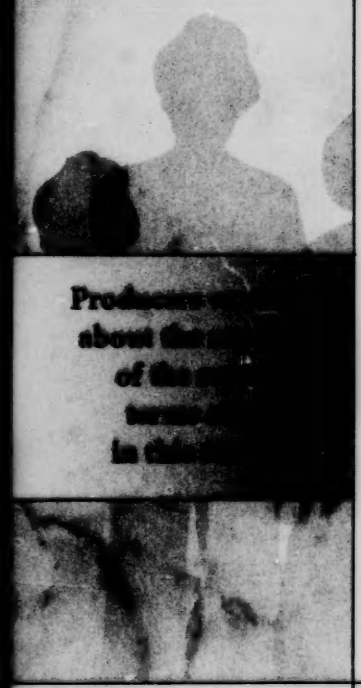
The Régie des assurances agricoles agreed with the Québec Ombudsman's point of view. It conducted a new compensation calculation, taking into account the fluctuations in the numbers of animals over the course of the month of March 1999, that is, the last insurable month. An additional amount of just over $2,000 was paid to the producer.

[illegible] Ombudsman's intervention, the Régie des assurances [illegible] des producteurs de pommes revised their [illegible] improved transparency in the regulation respecting [illegible] to producers and more equitable calculation of [illegible] to producers.

In 1994, the Régie des assurances agricoles established an income stabilization insurance program for apple producers, for a period of four years. Toward the end of this period, after having noted that no producer had drawn compensation from the program, the Fédération des producteurs de pommes instituted legal recourse against the Régie so that the premiums paid to the insurance fund be refunded to the producers.

The Fédération des producteurs de pommes and the Régie des assurances agricoles then reached an out-of-court settlement on a case in dispute. This agreement provided for a refund to every registered producer of the premium amounts paid during the insurance years from 1994 to 1998, as well as interest. However, the Régie was supposed to deduct from this sum the amounts that the producer should have, moreover, paid to the Fédération for marketing services.

Apple producers wondered about the regularity of the terms of repayment stipulated in this settlement. Since the Régie refused to amend the agreement reached with the Fédération, the producers called on the Québec Ombudsman to intervene in this matter. At this time, the refund cheques were ready to be posted, both to the producers and to the Fédération.



Producers [illegible] about the [illegible] of the [illegible] terms [illegible] In this

To properly grasp the situation, it is useful to specify that the Fédération des producteurs de pommes is a private agency that handles apple marketing, in accordance with a joint plan that it negotiates with buyers. The producers must pay premiums to the Fédération for the marketing services. The amount is established based on the quantity of apples sold through this plan. Moreover, the insurance plan, administered by the Régie des assurances agricoles, merely covers the same quantity of apples thus sold and the producer must forward confirmation of this to the Régie.

The law[4] stipulates that when the Régie pays compensation to those insured in accordance with the insurance program, it can deduct the premium amount owed by the producers to the Fédération and forward the amount to the latter. The Québec Ombudsman noted

4. *An Act respecting farm income stabilization insurance*, R.S.Q., c. A-31, section 36.

that the law does not provide for such a compensation mechanism when the Régie refunds insurance plan premiums.

Furthermore, the Québec Ombudsman noted that the existing debate over claims between the Fédération (a private agency) and producers would escape the Régie's monitoring. In fact, according to this agreement, the Fédération was responsible for reviewing any dispute over the amount of premiums owed to it by producers. Yet this issue directly influences the residual sum that the Régie must pay to producers as a public paying agency. As well, the Québec Ombudsman concluded that this procedure of the agreement did not ensure all the guarantees for transparency that are essential to an operation involving a public agency.

The Régie des assurances agricoles and the Fédération des producteurs de pommes moved to accept the opinion of the Québec Ombudsman and amended their procedures. In this way, they agreed to the following:

1. The Régie shall forward to the Fédération the data on apple quantity calculations for every producer registered in this program who has requested a review from the Fédération;
2. If, following verification of this data and its own, the Fédération deems that premiums are owing to it, it will examine the additional supporting documents that it will obtain from registered producers;
3. The Fédération shall proceed with the review and inform the Régie of the results;
4. The Régie shall only forward amounts owed to the Fédération and to insured producers after it has received the review results.

Briefly, the Fédération must conduct its own verification among producers in order to establish that they owe it premiums. This change runs counter to the established review procedure stipulating that producers had to carry out this procedure. But most importantly, the Fédération must now be accountable to the Régie.

These measures led the Régie to conduct a significant number of verifications on data concerning apple quantities recorded on producers' insurance statements. As a result, a review lowered the premiums payable to the Fédération.

Thus, thanks to the painstaking work of both agencies, some 150 registered producers shared approximately $80,000 more than the amount initially calculated. The Québec Ombudsman is particularly pleased with the fact that the Régie des assurances agricoles agreed to fully play its role as a public agency through to the outcome of this process, making it more transparent for the citizens involved.

2.2.5

LA SOCIÉTÉ DE L'ASSURANCE AUTOMOBILE DU QUÉBEC

LA SOCIÉTÉ DE L'ASSURANCE AUTOMOBILE DU QUÉBEC

The mission of the Société de l'assurance automobile du Québec is to "insure and protect individuals against road-related risks."[1] It conducts its activities within the context of four programs: compensation and rehabilitation of road-accident victims; the promotion of road safety; management of the right of access to the Québec road system and the related collection of duties; control of motor transport for both people and goods.

Road safety

A change of address is not always a mere formality at the Société de l'assurance automobile du Québec

In his 1999–2000 Annual Report, the Québec Ombudsman reported on the Société's impervious administrative organization. A change of address, for instance, made through the Accident Victim Services sector is not necessarily transmitted to the Highway Safety sector, or vice-versa. Yet a citizen who provides his new address reasonably expects the information to be noted in all his files at the Société.

The Québec Ombudsman asked the Société to implement a measure to remedy this problem. At the time, the Société stated that computer problems prevented it from implementing any solutions. A recent verification revealed that nothing has been done about the situation as of yet. The government is examining the possibility of setting up a single government outlet for all address changes. A consultation committee, made up of representatives from several organizations, including the Société, is currently analyzing the feasibility of this project. The Québec Ombudsman is of the opinion that the Société has not made adequate efforts to remedy the problem, which is prevalent within the agency.

A rule everyone should know: a person who sells his vehicle is responsible for this vehicle up until the moment the transfer is completed by the Société de l'assurance automobile

A person who sells his vehicle must have a transfer of property carried out by the Société de l'assurance automobile. The seller is responsible until the transfer is complete. For example, a seller must cover towing and storage charges for 30 days if a policeman seizes the vehicle from the buyer because his driver's licence is under sanction.

1. SOCIÉTÉ DE L'ASSURANCE AUTOMOBILE DU QUÉBEC [www.saaq.gouv.qc.ca], 2001.

Given the possible consequences, it is important that everyone be informed of this rule pertaining to the transfer of a vehicle. This is why the Québec Ombudsman asked the Société de l'assurance automobile to modify the text found on the back of the registration certificate to include a clear reference to this rule. The Société followed-up on this request. The certificate now includes bears a statement to the effect that: the contracting parties must have the transfer of property completed in an SAAQ service outlet, otherwise the seller or donor remains responsible for the vehicle.

The Québec Ombudsman also asked the Société to take measures to ensure that this information is brought to the attention of all citizens. The Société is currently taking steps to improve communication with its clientele.

[illegible] citizens asked the Québec Ombudsman to [illegible] change problems.

According to the Highway Safety Code[2], citizens holding a driver's licence or a vehicle registration certificate must notify the Société de l'assurance automobile of a change of address within 30 days. It may happen that citizens who meet this requirement fail to receive the documentation sent by the agency on time and unknowingly commit illegal acts. As such, a person who drives with a suspended licence can get a ticket, have his vehicle seized and even be forced to cover the costs related to the vehicle's seizure.

The Québec Ombudsman questioned the Société's system for recording address changes and for processing mail. The Québec Ombudsman noted that sanction notices were sent by registered mail and that any unclaimed mail was returned to the Société after a 30-day period. It also noted that, after receiving the unclaimed mail, the Société would wait another 40 to 45 days before reshipping it. During this time, no steps were taken to reach and inform the person whom the mail was intended for. As a result, the Société failed to inform these persons on time about such things as the suspension of their licence. Furthermore, when no address change could be traced in the computer system after this 45-day period, the file was closed without further notification.

An effort [illegible]

According to the Québec Ombudsman, the Société needed to make more of an effort to contact citizens in a timely manner. It asked that the Société attempt to trace the new address as soon as it received the unclaimed mail and immediately reship the sanction notice. The Société gladly accepted this proposal. Moreover, when the Société is unable to find the new address, it now conducts a weekly computer check for a period of eight weeks in an attempt to trace it.

2. *Highway Safety Code*, R.S.Q., c. C-24.2.

Compensation for Road Accident Victims

Unjustified decisions and decisions rendered [illegible] mation are likely to deprive citizens of [illegible]

Road accident victims complained to the Québec Ombudsman that the Société de l'assurance automobile du Québec refused to accept that there was any connection between their road accidents and the injuries sustained during these accidents. The Société cited such arguments as a delayed appearance of injuries, a delayed medical consultation or a long period without medical follow-up, no mention of the alleged problem in medical documents pertaining to the accident, or a refusal to recognize the incident as accidental, in other words, a refusal to accept that the incident was in fact an automobile accident.

The Québec Ombudsman reviewed many of the Société's written decisions and noted shortcomings in the composition of some documents. In certain cases, the decisions failed to indicate why the case had been refused when, at the same time, the Société's file clearly showed that the refusal was justified by a long delay in the appearance of injuries. Here is an example: "A review of your case indicates that there is no relationship between your lower back problems and your accident. As a result, this condition does not grant you the right to receive indemnities as provided for in the Automobile Insurance Act."

For victims whose cases are refused, receiving a justified decision is of the utmost importance. It enables victims to either present observations to the Société, ask that the case be reviewed and, where necessary, produce additional documents as provided for in section 7 of An Act respecting administrative justice.[3]

Furthermore, according to the Québec Ombudsman, decisions such as those described above should not be delivered to victims since they are not consistent with section 8 of An Act respecting administrative justice[4] which obligates the administrative authorities to provide justifiable grounds for all unfavourable decisions. Section 83.43 of the Automobile Insurance Act[5] serves the same purpose.

Moreover, in its operational procedures manual, the Société's direction de l'indemnisation [compensation department] reiterates that "top-quality work" is one of its organizational values. It defines this as consistency with laws, guidelines, practices and regulations. This manual includes a procedure for evaluating whether or not a delay for medical consultation or a delay in the appearance of injuries is reasonable. The Québec Ombudsman endorses this procedure but has noted that the Société does not adhere to it and is thereby contravening one of its own organizational values.

3. *An Act respecting administrative justice*, R.S.Q., c. J-3.
4. op. cit., note 1.
5. *Automobile Insurance Act*, R.S.Q., c. A-25.

The Québec Ombudsman is concerned by another problem that has been brought to its attention. It noted that the Société does not always conduct exhaustive verifications before it rejects the relationship between an injury and an accident, or before it rejects the incident as an accident. In fact, the Québec Ombudsman often observed that, had the compensation agent asked the victim for a detailed explanation of the accident's circumstances and the injury's appearance, he would have been able to accept the claim and prevent the victim from suffering delays and costs in seeking recourse.

These types of situations prompted the Québec Ombudsman to suggest that the Société make general modifications to its procedure for analyzing victim claims and to the content of the decisions rendered on these claims. The Société agreed to pay special attention to the concerns raised by the Québec Ombudsman. As a result, it reminded all compensation staff of the need to verbally notify accident victims when their claim is about to be rejected. By doing so, compensation staff can explain the grounds for rejection and ensure that victims have been given the opportunity to provide all of the information needed for the decision-making process. The Société also reminded its staff that all decisions must be adequately justified.

However, based on the Québec Ombudsman's observations to date, the Société's reminder to its staff members has not brought about the expected results. The Québec Ombudsman therefore plans to undertake another attempt to make the Société aware of the importance of supporting its decisions.

As part of its plan for modifying compensation, the Société proceeded to review all of the written documents intended for its clientele. During a meeting with those in charge of the review process, the Québec Ombudsman took the opportunity to reiterate comments previously formulated on the quality of decisions rendered, hoping that the reviewers would take them into consideration when making modifications to this type of form letter.

Lastly, the Québec Ombudsman read the Société's recent Service Statement[6] which outlines the objectives it has set for itself with relation to road accident victims. They are as follows: communicate with citizens in clear, simple and straightforward language, and provide them with reliable information. The Québec Ombudsman is convinced that compliance with these commitments should result in greatly improving in the situation at issue.

[illegible] is owed remains unpaid, and a lack [illegible] information prevents road accident [illegible] received.

In his last two Annual Reports, the Québec Ombudsman reported on his interventions with the Société de l'assurance automobile du Québec to ensure that accident victims received payment for interest owed. This year, citizens grappled with the same problem.

6. SOCIÉTÉ DE L'ASSURANCE AUTOMOBILE DU QUÉBEC [www.saaq.gouv.qc.ca], 2000.

In the first case, a citizen believed that he had not been paid any interest following a correction made to his file in 1996 and which entitled him to a substantial income replacement indemnity, retroactive to 1983. The investigation revealed that he had been paid almost $10,000 in interest in December 1996, but that no decision or explanation had been provided.

The Québec Ombudsman asked the Société to provide the citizen with a detailed calculation of the interest paid so he could ensure that the amount was accurate. It was then that an important mistake was discovered. The interest paid to the citizen had been calculated from 1991—the year in which the Bureau de révision rendered a decision unrelated to the court case—when it should have been calculated from 1983, the year in which the initial error was made. As a result of the Québec Ombudsman's representations, the Société made over $37,000 in additional interest payments and provided the citizen with a written decision informing him of his right to appeal.

In the second case, a citizen complained that the Société had not paid him any interest after the decision rendered in 1998 concerning his permanent impairment had been reconsidered. The Québec Ombudsman had to remind the Société that, since January 1, 2000, the Regulation respecting the application of the Automobile Insurance Act[7] states that interest must be paid in these circumstances. Interest was therefore paid out to the citizen but the decision concerning the payment of interest gave no indication of the period covered by this particular payment. As in the previous case, the citizen did not have all of the information needed to determine whether he had received the full interest payment to which he was entitled.

To prevent this situation from recurring, the Québec Ombudsman broadened the scope of its intervention with the Société. First, it asked that decisions concerning interest payments stipulate the period covered by the payments. Second, it drew the Société's attention to the fact that, despite the new regulatory provisions, none of its procedures ensured the payment of interest.

Following the Québec Ombudsman's intervention, the Société reminded compensation agents of the importance of paying interest when a decision is reconsidered and of providing—in the letter forwarded along with the payment—the citizen with information pertinent to the calculation of interest.

Subsequent complaints showed that this reminder did not yield the expected results. The Québec Ombudsman again intervened in order to help the Société find a more effective way of ensuring that citizens receive any relevant, useful information and everything to which they are entitled. The Société is currently examining possible solutions. The Québec Ombudsman will closely monitor this situation.

7. *Regulation defining certain words and expressions for the purposes of the Automobile Insurance Act*, Order in Council 1334-99, December 1, 1999 [1999, G.O. 2, 6130], section 2 (introducing the new section 14.2). The title of the regulation was replaced by *Regulation respecting the application of the Automobile Insurance Act* [A-25, r.0.01] section 14.2.

3

WORDS OF THANKS FROM CITIZENS

WORDS OF THANKS FROM CITIZENS[1]

I cannot find the words to thank you but I will simply tell you, if we want to make the world a better place, we need people like you in all areas ...

To my shame, I must admit that I had only kept abreast of the activities of the Québec Ombudsman in a rather distracted way. It was only when I was personally affected by a problem and that I was advised to approach your agency, that my perception of the Ombudsman shifted from virtual indifference to admiration and enthusiasm. It took the prospect of having to appear before the courts and bear the costs of legal guerilla warfare against an adversary with unlimited resources. Without you, we would have given up, despite being well within our rights. Thanks to your personal commitment, the authorities, confronted with the facts and their responsibilities, took the only fair and honourable route by compensating us. You know, citizens feel crushed when facing the huge governmental machine. You are there to restore the balance. Madame, you acted with tact, commitment and persistence. We can never thank you enough. The Québec Ombudsman accomplishes tremendously useful work...

I contacted you at the beginning of the week to explain my situation with our family benefits. To my great surprise the deposit was made Tuesday or Wednesday and the amount was exactly the amount that you had confirmed with me, everything is settled, you can close my case. If all the people in government departments behaved as attentively and as humanly as I observed you to do, this would surely reduce a great deal of conflict and aggressiveness on the part of taxpayers. I believe that an employee such as yourself deserves mention because, in our day and age, we don't come by people like you very often. I specifically wish to thank you for: your attentiveness during my telephone call, you took the time to listen to my problem; your understanding, you took the time to understand and analyze my problem; your humanity, you were human enough to understand that for us, $135 is a great deal of money; your competence as well as your promptness in taking action, you were able to solve our problem within a period that exceeded our hopes...

1. Letter excepts quoted in their entirety.

I received help from one of your employees and the experience proved to be quite pleasant, in fact, because this lady was able to encourage me by helping me ($2,600 bursary for a very poor person). And finally, the Montréal Office released my Logirente payment within 24 hours, the said payment not having been made "because of a mere programming error and, unfortunately, we can't do anything about it," said the Logirente office representative (who was sorry). All that to say that I believe in you, in your employees, in this Ombudsman's Office. I often give the address to people in desperate situations...

The following is to thank you for all the work and the hours of effort that you put into settling my case... I can't find the words to adequately express the gratitude that I feel for both of you and for the agency that you represent. In the beginning, I must admit that I did not have too much confidence in your agency, but now I see, happily, that I was mistaken...

4

PUBLIC AND MEDIA RELATIONS

PUBLIC AND MEDIA RELATIONS

Over the course of the year 2000–2001, the Québec Ombudsman took part in some 50 public and media relations events. Mindful of the institution's role in protecting citizens' rights, the Québec Ombudsman made use of different public forums to promote this role and the services that the institution offers the public.

The Québec Ombudsman gave press conferences and interviews to comment official opinion upon the release of the institution's special reports on the review of the prescription drug insurance plan, the exploitation of the elderly and the review of the Québec healthcare system.

The Québec Ombudsman took part in awareness-raising and information events, in the form of symposiums, round-table discussions and meetings with community and private organizations. As such, the Ombudsman participated in the round-table discussions which were part of the symposium on justice reforms, *Outil et instrument de justice : Réforme de la justice civile* and the *Séminaire interactif sur la citoyenneté*, the consultation committee on mental impairment, *Accueil et traitement au sein du système judiciaire*, organized by the Montréal-Centre Régie régionale, the *Cirque du monde et jeunes marginaux* symposium and a colloquium for Québec legislative and corporate ombudsmans.

Concerned with fulfilling the institution's role in monitoring, but also in working together with the public administration, the Québec Ombudsman met with members of the Association des responsables de la gestion des plaintes du gouvernement du Québec as part of a day of discussion. The Québec Ombudsman also participated in a focus group organized by the ministère de l'Emploi et de la Solidarité sociale, in a forum which brought together the high-level administrators of large government agencies (Government of Québec) and in a meeting of the Association des ressources matérielles du gouvernement du Québec.

The Québec Ombudsman responded to over forty requests from the print and electronic media. A number of issues captured media attention, including: the Dubreuil Affair, the Duplessis Orphans, the quality of customer service at the government of Québec, the "Connecting Families to the Internet" program, support payment collection, correctional services and the elderly.

Through participation in public and media relations activities, the Québec Ombudsman aims to educate the public about the institution's role in society and the last recourse that it makes available to all persons or groups who feel they have been wronged by the public administration.

SPEECHES AND CONFERENCES

April 12, 2000	"Le rôle du Protecteur du citoyen" [The role of the Québec Ombudsman], La Maisonnée, Montréal, Québec.
April 13, 2000	"The Ombudsman: in Québec and Throughout the World," Fifth International Meeting of the National Institutions for the Promotion and Protection of Human Rights, Rabat, Morocco.
April 17, 2000	"En quoi les tribunaux sont-ils en train de dessiner les changements qui s'imposent dans la santé ?" [How are the courts influencing the changes required in the healthcare system?], Les Grands Sommets de la Santé 2000, Montréal, Québec. (In French only)
April 28, 2000	"Les devoirs de l'Administration envers le public" - [The Administration's duties towards the public], Clubs de l'administration du Canada-Granby Chapter, Granby, Québec.
May 2, 2000	"La citoyenneté" [citizenship] La Ruche Vanier, Québec City, Québec.
May 5, 2000	"Regards sur les droits de l'enfant d'hier, d'aujourd'hui et de demain" [A look at children's rights—yesterday, today and tomorrow], Ligue des droits et libertés du Saguenay–Lac-Saint-Jean, Jonquière, Québec.
June 8, 2000	"Complaints Against Us. Is it Possible?", Second Ombudsman Leadership Forum Conference, San Francisco, California.
June 9, 2000	"Developing recommendations and getting them adopted," Second Ombudsman Leadership Forum Conference, San Francisco, California.
June 9, 2000	Ju"Travailler avec des personnes vulnérables" [Working with vulnerable individuals], Second Ombudsman Leadership Forum Conference, San Francisco, California. (In French only)
June 14, 2000	"Les aînés et les résidences d'hébergement" [The Elderly and Group Homes], Regroupement AQDR-Mauricie, Shawinigan, Québec.
September 8, 2000	"Independence and Access—Two cardinal points to guide the Ombudsman on the sea of democracy and orient the choice of an institutional model," International conference, Beirut, Lebanon.
September 22, 2000	"Le rôle du Protecteur du citoyen" [The role of the Québec Ombudsman], National Forum on Citizenship and Integration, Québec City, Québec.

September 27, 2000	"La mission du Directeur de l'état civil sous l'éclairage du Pacte social" [The mission of the Directeur de l'état civil in light of the Social Contract], Rendez-vous 2000 du Directeur de l'état civil, Saint-Augustin-de-Desmaures, Québec. (In French only)
October 4, 2000	"The ombudsmediator: useful or essential?", International Congress—Rights protection and democratic participation, Rome, Italy.
October 17, 2000	"Le rôle du Protecteur du citoyen" [The role of the Québec Ombudsman], Forum: "Les jeunes et la violence" [youth and violence], Montréal, Québec.
October 30, 2000	"The effectiveness of the ombudsman: expertise and fostering awareness," VIIth International Conference of the International Ombudsman Institute, Durban, South Africa.
November 14, 2000	"Ins and Outs of the Contemporary Ombudsman," Administrative Counselling and Ombudsman Conference, Fukuoka, Japan.
November 24, 2000	"Le rôle du Protecteur du citoyen" [The role of the Québec Ombudsman], South Asian Women's Community Centre, Montréal, Québec.
December 4, 2000	"L'ombudsman: pour faire face à la machine administrative" [The Ombudsman: dealing with the administrative machine], Ombudsman's Forum, Montréal, Québec. (In French only)
December 6, 2000	"Confidentialité et transparence : une éthique pour l'ombudsman" [Confidentiality and transparency: code of ethics for the Ombudsman], Ombudsman's Forum, Montréal, Québec.
January 24, 2001	"Le rôle de l'ombudsman" [The role of the Ombudsman], Association of Certified Fraud Examiners, Montréal, Québec. (In French only)
February 21, 2001	"Le Protecteur du citoyen au Québec et à l'international" [The Québec Ombudsman: in Québec and throughout the world], Cégep Édouard Montpetit's Passeport-Europe program, Longueuil, Québec.
March 26, 2001	"Le rôle du Protecteur du citoyen" [The role of the Québec Ombudsman], Forum des dirigeants des grands organismes, Québec City, Québec.
March 28, 2001	"L'éthique" [ethics], Annual training seminar for special education workers, Sainte-Foy, Québec.

5

THE CONTRIBUTION OF THE QUÉBEC OMBUDSMAN TO THE DEVELOPMENT OF THE RULE OF LAW IN THE INTERNATIONAL COMMUNITY

THE CONTRIBUTION OF THE QUÉBEC OMBUDSMAN TO THE DEVELOPMENT OF THE RULE OF LAW IN THE INTERNATIONAL COMMUNITY

The Québec Ombudsman participates, as do many of its counterparts, in maintaining and reinforcing the rule of law, thereby contributing to the rise of democracy, and to the promotion and the defence of human rights.

The recognition of the dignity of the individual is the cornerstone of rights and freedoms. No society can claim to be civilized if it does not protect human dignity. How is the value of a right to be assessed, if not in practice? Its enshrinement in documents, however constitutional they might be, is inadequate. Thus the implantation of mechanisms to monitor the application of human rights, such as ombudsman institutions, is imperative.

The Québec Ombudsman is an institution that is recognized around the world for its professionalism, its contribution to the development of the rule of law and the quality of its interventions in international cooperation.

The Québec Ombudsman is an active member of four professional ombudsman associations that pursue the same objectives: promote the concept of ombudsman, support existing institutions, train staff, foster research and disseminate information.

THE INTERNATIONAL OMBUDSMAN INSTITUTE

Founded in 1978, the International Ombudsman Institute (IOI) is a worldwide organization of ombudsman offices, and currently comprises 240 members. Its head office is located at the University of Alberta in Edmonton. Its Board of Directors meets yearly and a conference of members is held every four years. In November 2000, the Québec Ombudsman attended the 7th conference held in Durban, South Africa.

THE ASSOCIATION OF OMBUDSMANS AND MEDIATORS OF FRENCH-SPEAKING COUNTRIES

The Association of Ombudsmans and Mediators of French-Speaking Countries brings together ombudsman institutes and mediators from the French-speaking world. It has offices in Paris and in Québec City and currently comprises 32 members. The Association was founded at the initiative of the *Médiateur de la République française* and the Québec Ombudsman in 1997, with the collaboration of the Government of Québec and the *Agence de la Francophonie*. The Association's Board of Directors meets annually—last year in Durban, South Africa—and a member's conference is held every two years. The Principauté d'Andorre will host the next conference in October 2001.

THE CANADIAN OMBUDSMANS ASSOCIATION

Although Canadian provincial ombudsman offices have held annual meetings for the past 25 years, the Canadian Ombudsmans Association (COA) was only established in 1998. Comprising 125 members, the COA's head office is located at the offices of the Ombudsman of Ontario, in Toronto, Ontario. The Board of Directors holds its annual meeting at the members' conference. Québec City will host the next conference in September 2001.

THE UNITED STATES OMBUDSMANS ASSOCIATION

The Québec Ombudsman is also an institutional member of the United States Ombudsmans Association (USOA), and participates in the association's continental conferences, held every two years.

NATIONAL RELATIONS

There are several national and regional ombudsman associations worldwide, as well as organizations that bring together ombudsmans working in specific sectors. They contribute to the establishment and the development of ombudsman institutions, to the promotion of human rights, as well as to the protection of citizens' rights with respect to public administrations and sometimes, the private sector. This international community of ombudsman institutions cannot work to maintain and strengthen its existence without the effective co-operation of its members.

THE QUÉBEC'S ROLE IN INTERNATIONAL CO-OPERATION AND THE PROMOTION OF HUMAN RIGHTS

Canada and Québec have adhered for many years to international protocols on human rights. The Government of Québec fulfills its commitments through the ministère des Relations internationales and also through the specific activities of its departments and agencies.

Since the meeting of Justice ministers in Cairo in 1995, the Hanoi Summit in 1997, and Moncton Summit in 1999, Québec has participated more extensively in the development of the rule of law, in the protection of human rights and in the promotion of institutions dedicated to the protection of rights.

Within its area of competence, the Québec Ombudsman is associated with this process in collaboration with the ministère des Relations internationales. It also participated in the Benin democracy and human rights support program, 1999, and is associated with implementing the resolutions of the Bamako Conference.

As an independant public authority, the Québec Ombudsman also assumes the international obligations incumbent on this institution. It contributes in part to this effort directly from its budgets, in the same capacity as the Government of Québec, the National Assembly and the departments and agencies of the government.

The Québec Ombudsman cooperates internationally by assisting in the training of staff in ombudsman offices or by travelling on site to provide support, particularly in developing countries and countries in transition to democracy. He also participates in the activities of ombudsmen's associations of which he is a member.

THE MAIN ACTIVITIES OF THE QUÉBEC OMBUDSMAN IN 2000–2001

From March 20 to April 7, 2000, Québec Ombudsman's Service Quality Commissioner attended a training seminar on the theme of institutional mediation organized by the Institut International d'Administration Publique, in conjunction with l'institution du Médiateur de la République française in Paris. The Québec Ombudsman's representative reported on the Québec experience in this field.

In April 2000 in Montréal, the Québec Ombudsman hosted—in collaboration with Québec Superior Court—a delegation of judges from the People's Republic of China as part of judges' training program. He also greeted a delegation from South Korea, directed by the Deputy Ombudsman of South Korea, and comprising representatives of the Prime Minister's cabinet and various departments. This meeting was part of the Korean foreign training program and was carried out in collaboration with the Parliamentary Centre of Canada and the ministère des Relations internationales.

Also in April 2000, the *Conseil consultatif des droits de l'Homme* (International Consultative Committee of Human Rights) invited the Québec Ombudsman to the Fifth International Meeting of the National Institutions for the Promotion and Protection of Human Rights in Rabat, Morocco. Although unable to attend this meeting, he nevertheless submitted the text of his speech, entitled "The Ombudsman: in Quebec and Throughout the World."

In May 2000, in conjunction with the Parliamentary Centre of Canada and the *Bureau du Protocole des Affaires interparlementaires du Québec*, the Québec Ombudsman hosted a delegation of seven parliamentarians and high-ranking public servants of the People's Republic of China within the framework of a mission of familiarization with Canadian practices of public consultation.

From May 15 to June 30, 2000, a representative of the Québec Ombudsman acted as an advisor to the employees of the Sri Lankan Ombudsman. Specifically, he discussed investigative techniques and case management, in addition to participating in workshops organized by the public service training office. The activity was conducted as part of the *Good Governance and Institutional Strengthening* program of the University of Ottawa's Human Rights Research and Education Centre.

In June 2000, in San Francisco, United States, the Québec Ombudsman and his assistant participated in the Second Ombudsman Leadership Forum Conference which brought together ombudsman institutes of North America. Moreover, during a meeting with representatives of North American ombudsman associations, the Québec Ombudsman proposed Québec City's candidacy to host the next Superconference in 2004. It should be noted that the candidacy was prepared in close collaboration with the *Centre des congrès de Québec* (Québec City Convention Centre). Also as part of this conference, he participated in the annual meeting of the North-American regional constituency of the International Ombudsman Institute, as well as in the general assembly of the Canadian Ombudsman Association.

In collaboration with the *École nationale d'administration publique* and the Parliamentary Centre of Canada, in June 2000, the Québec Ombudsman hosted a delegation of Bulgarian parliamentarians who had come to study Canadian institutions strengthening government accountability. The purpose of this meeting was to establish an Ombudsman Institute in Bulgaria.

The Québec Ombudsman greeted a Thai delegation at his Montréal offices. The Ombudsman of Thailand and three of his colleagues were received on August 29, 2000. The delegation was conducting a tour to visit Canadian ombudsman institutes. In recent years, the Québec Ombudsman has closely collaborated with the establishment of the Thai Ombudsman Office.

On September 4–6, 2000, the Québec Ombudsman chaired the meeting of the Board of Directors of the Association of Ombudsman and Mediators of French-Speaking Countries in Bucharest, Romania. He also attended the annual conference of the Institute for Human Rights Lebanon that took place in Beirut on September 8–9, 2000. On September 12–13, 2000, in Paris, he met with the representatives of the Agence internationale de la Francophonie, UNESCO, and with the Médiateur de la République française. As well, he met with Mr. Boutros Boutros-Ghali, the Agency's Secretary-General and with Mr. Roger Dehaybe, its Director-General.

On the invitation of Ms. Maria Grazia Vacchina, Mediator of the Vallée d'Aoste, in Italy, the Québec Ombudsman traveled to Rome to attend the convention of regional mediators on October 4, 2000.

On October 11–13, 2000, the Québec Ombudsman's assistant attended a meeting of Canadian legislative ombudsmans in Canmore, Alberta.

On October 12–15, 2000 in Montréal, the Québec Ombudsman's Service Quality Commissioner attended the "Inter-Regional Conference on Confidentiality and Society: Psychotherapy, Ethics and the Law," jointly organized by the Canadian Psychoanalytic Society, the International Psychoanalytical Association, the American psychiatric Association and the Canadian Psychiatric Association.

The Québec Ombudsman attended the VIIth International Conference of the International Ombudsman Institute in Durban, South Africa. On this occasion, the Association of Ombudsmans and Mediators of French-Speaking Countries held a general assembly of its members, as well as the North-American chapter of the IOI.

On November 14–15, 2000, the Québec Ombudsman was invited to attend the convention of the Administrative Inspection Bureau, Management and Coordination Agency and the National Federation of Administration Councillors of Japan in Fukuoka.

THE INTERNATIONAL ADDRESSES

The Association des ombudsmans et médiateurs de la Francophonie (AOMF), the International Ombudsman Institute (IOI), the Canadian Ombudsman Association (COA) and the United States Ombudsman Association may be reached at the following addresses:

ASSOCIATION DES OMBUDSMANS ET MÉDIATEURS DE LA FRANCOPHONIE (AOMF)

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Le Protecteur du citoyen du Québec
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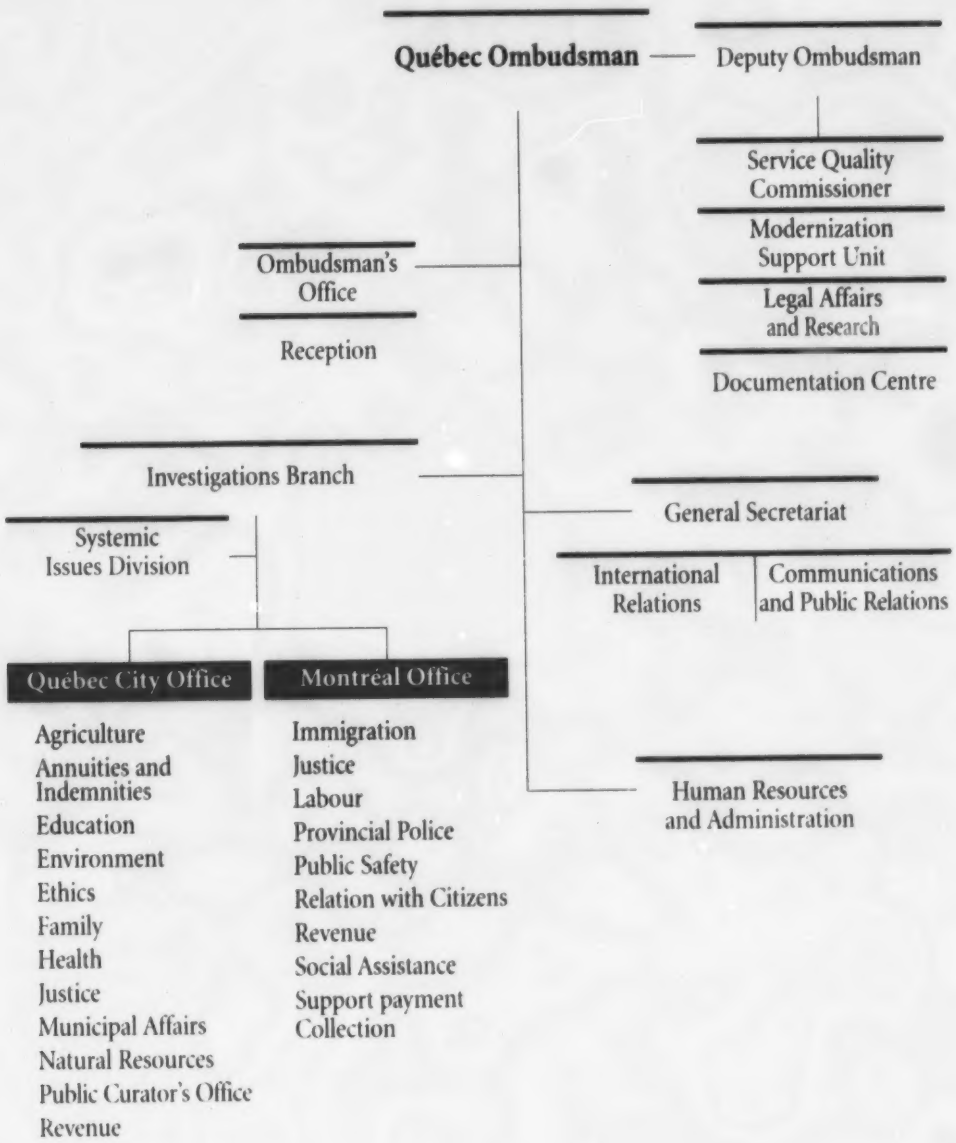
6

ADMINISTRATIVE DATA

ADMINISTRATIVE STRUCTURE

6.1

ORGANIZATIONAL CHART



MANDATE OF ADMINISTRATIVE UNITS

Reception staff accept service requests from citizens, inform citizens of the role of the Québec Ombudsman, and assist and guide them in the appropriate steps to be taken with the department or agency involved. If necessary, reception staff forward citizens' requests to the Investigations Branch.

The Investigations Branch processes service requests from citizens who feel they have been treated unfairly by a department or an agency under the jurisdiction of the Government of Québec. When the investigation shows that the citizens' request is legitimate, the Québec Ombudsman intervenes with the agency concerned to secure redress of the observed errors, injustices or inequities. Mediation is conducted to settle disputes where circumstances so require. As well, the Investigations Branch proceeds with systemic studies in order to identify and rectify the source of recurrent problems.

In addition, as a preventive measure, this branch analyses draft legislation, regulations, policies, guidelines and programs to recommend amendments to provisions likely to cause injustices or wrongs to citizens. It prepares opinions, advisory reports and briefs in support of the Québec Ombudsman's intervention with the National Assembly, ministers and agency managers.

The General Secretariat oversees communications, public relations and international co-operation for the Québec Ombudsman. To this end, it coordinates, notably, relations with ombudsman offices that request its assistance.

Human Resources and Administration ensures proper management of the human, financial, material and information resources of the Québec Ombudsman.

Service Quality Commissioner of the Québec Ombudsman

The Québec Ombudsman stated her intention to offer high quality services to citizens by adopting an internal mechanism to review the complaints lodged by citizens who are dissatisfied with the services dispensed by her staff. The investigation of citizens' complaints provides a precious source of indicators that enable the Ombudsman to determine the manner in which services might be improved.

Recourse to the Service Quality Commissioner is prompt, accessible and independent of operational services. In her *Service Statement* published March 30, 2001, the Québec Ombudsman commits to processing every complaint received with the greatest possible openness, with strict confidentiality and impartiality, within no more than twenty business days.

Management Committees

In order to ensure enlightened management, the Québec Ombudsman relies on her advisory committees.

The management committee assists the Québec Ombudsman in her duties of guiding and managing the institution. It comprises the Québec Ombudsman, the Deputy Ombudsman, the Director of Reception, the General Director of the Investigations Branch, the General Secretariat and the Director of Human Resources and Administration.

The Committee on Protection of Personal Information oversees the application of An Act respecting Access to documents held by public bodies and the Protection of personal information through the implementation of an action plan adapted to the institution. It is presided by the Québec Ombudsman and brings together the person responsible for access to documents and protection of personal information, the Director of Human Resources and Administration, the person in charge of documentary resources and a Montréal Office representative.

6.2 MANAGEMENT OF RESOURCES

Human Resources

In 2000–2001, the Québec Ombudsman employed a staff of 84 authorized positions to which was added a position from the Secrétariat du Conseil du trésor. As of March 31, 2001, the regular positions were allocated in the following manner:

2000-2001 QUÉBEC OMBUDSMAN STAFF

	Special appointments	Senior managers	Middle managers	Professionals	Technicians	Support staff	Total
Office of the Ombudsman and the Deputy Ombudsman	2	1	4	3		3	13
Reception			1		4		5
General Secretariat and Communications		1		2		2	5
Investigations Branch		2	1			1	4
Québec City Office		1		15	6	3	25
Montréal Office			3	7	10	2	22
Human Resources and Administration		1		3	2	3	9
Non-allocated							2
Total							**85**

Moreover, casual employees were hired over the course of the year for a total of 13.5 full-time persons.

The Québec Ombudsman attempted to increase her staff by requesting, with the support of the Secrétariat du Conseil du trésor, service loans or position transfers from departments and agencies of the Government of Québec. To this end, she held recruitment competitions for professional, technician and information agent positions. Despite these efforts, she only obtained two positions from service loans, namely one information agent for a period of one year, and one professional for two years.

Finally, staff training has continued to be central to the institution's concerns. To this end, it has invested $64,635, that is, 1.35% of its payroll. Furthermore, once again the Québec Ombudsman has associated with the Barreau du Québec, and seven articling law students were able to complete their training in paid positions for a period of six months.

BUDGET OF THE QUÉBEC OMBUDSMAN

6.3

Financial Resources

The budgetary credits allocated to the Québec Ombudsman by the National Assembly for the year 2000–2001 were expended in the following manner:

EXPENDITURE STATEMENT FOR THE FISCAL YEARS ENDED MARCH 31, 2000 AND 2001

	1999-2000 ($)	2000-2001 ($) (ESTIMATION)
Staff		
Regular and temporary employees	4,139,297	4,469,949
Employer's contributions	408,267	467,198
Pensions for former ombudsmen and deputy ombudsmen	91,629	150,368
Total	**4,639,193**	**5,087,515**
Operations		
Transportation and communications	440,050	377,509
Professional and administrative services	160,599	238,736
Maintenance and repairs	28,249	15,238
Rent and leasing fees	816,426	813,246
Goods and supplies	73,561	69,809
Material and equipment	12,449	38,679
Amortization	51,407	62,533
Other expenditures	2,915	1,895
Total	**1,585,656**	**1,617,645**
Capitalization		
Computer technology development	218,824	48,924
Material and equipment	7,980	32,033
Total	**226,804**	**80,957**
Grand Total	**6,451,653**	**6,786,117**

The operating expenditures for the year 2000–2001 exceed the budgetary credits allocated at the start of the fiscal year by $281,045. Additional budgetary credits for remuneration and operating expenditures were secured on a recurrent basis in order to balance the budgetary credits required to carry out the mission of the Québec Ombudsman.

6.

APPLICATION OF AN ACT RESPECTING PERSONAL INFORMATION

Following the governmental action plan for the protection of personal information, every department and agency must proceed with an annual evaluation of the level of protection of personal information and account for it in its annual report. For the year 2000–2001, the *Plan* required that the agency conduct a review of access rights to—access profiles of—its most important file.

Operation "Access Profiles"

Diagnosing the access profiles for the most important file—taking into consideration the organization's mandate and the sensitive nature of the personal information it contains—led the Québec Ombudsman to redefine these profiles and to produce a new *File Declaration* from its "File Management" data base. This computer file includes personal data on persons who have requested information or required the Ombudsman's intervention, the nature of the request, the summary of the intervention and the name of the person responsible for the file.

Awareness-raising and training activities in 2000–2001

The "Access Profiles" operation gave rise to meetings designed to raise awareness about the protection of personal information (PPI) in daily operations. With a view to fostering appropriate behaviour, a three-and-one-half hour training session on the principles of PPI was given by the École nationale d'administration publique (ENAP) to fourteen employees.

The adoption of a guideline on polls conducted by the Québec Ombudsman provided an opportunity to raise the awareness of all staff and managers about the regulations concerning the utilization of nominative information.

Finally, the advisory reports of the Commission d'accès à l'information were submitted to the Québec Ombudsman's Intranet.

PRIORITIES FOR ACTION IN 2001–2002

The Québec Ombudsman selected the following priorities for action over the next fiscal year:

- Continue to review the *File Declaration* for staff files, access profiles, and access procedure, in compliance with the governmental action plan.
- Continue to hold meetings to raise staff awareness about the protection of personal information.
- Hold a three-and-one-half hour training session on the principles of the protection of personal information (PPI) for all staff, to be given by the ENAP.
- Continue to develop information and work tools in PPI in the Intranet.

STATISTICS

5.5

Introduction

The following pages provide data on the requests received and the interventions undertaken by the Québec Ombudsman in 2000–2001.

One table was added and others have been modified. Unlike previous years, all of the data pertaining to the processing of citizen requests include requests under investigation at the start of the year.

To facilitate reading of the data, a brief definition of the main terms used in the tables is provided below.

Lastly, the tables are preceded by a summary of the data for 2000–2001.

Some definitions

Request for information:

A request made to the Québec Ombudsman which the latter determines to be merely a request for information. Such a request may concern a department or agency within the Québec Ombudsman's jurisdiction, or an organization or a matter of information beyond its jurisdiction.

Request for intervention:

A request made to the Québec Ombudsman which the latter determines to be a grievance or complaint requiring its intervention. Such a request may concern a department or agency within the Québec Ombudsman's jurisdiction or an organization beyond its jurisdiction.

Rejected request for intervention:

The Québec Ombudsman declines to intervene with respect to requests that concern a department beyond its jurisdiction or a private matter, or because the citizen has access to adequate legal recourse, or because an aspect of the law prevents it from intervening even when the request concerns the act or failure of a department within its jurisdiction.

Referred request for intervention:

The Québec Ombudsman refers a request for intervention concerning a department or agency which falls within its jurisdiction and asks the citizen to first present his case to the department in question or to this department's complaints office.

Suspended intervention:

The Québec Ombudsman suspends the investigation process when it recognizes that the request is beyond its jurisdiction, an aspect of the law prevents it from intervening or the dispute has been settled.

Intervention without request for correction or unjustified complaint:

Upon intervening with a department or agency within its jurisdiction, the Québec Ombudsman determines that the citizen filing the request has not been wronged by an act or failure of this public organization.

Intervention with request for correction or justified complaint:

Upon intervening with a department or agency within its jurisdiction, the Québec Ombudsman determines that the citizen has been wronged by an act or failure of this public organization.

2000–2001 Data Summary

On April 1, 2000, the Québec Ombudsman officially began the year 2000–2001, with 1,352 requests under investigation. During the year, citizens or groups filed 24,275 requests with the office of the Québec Ombudsman and the latter also undertook 200 interventions on its own initiative, including approximately one hundred cases of public scope. of broader scope, concerning groups of people]. During the year, 24,506 requests—received both during and before 2000-2001—were processed. The year closed with an inventory of 1,321 requests and interventions.

FIGURE 1

REQUEST LEVELS SINCE 1996-1997

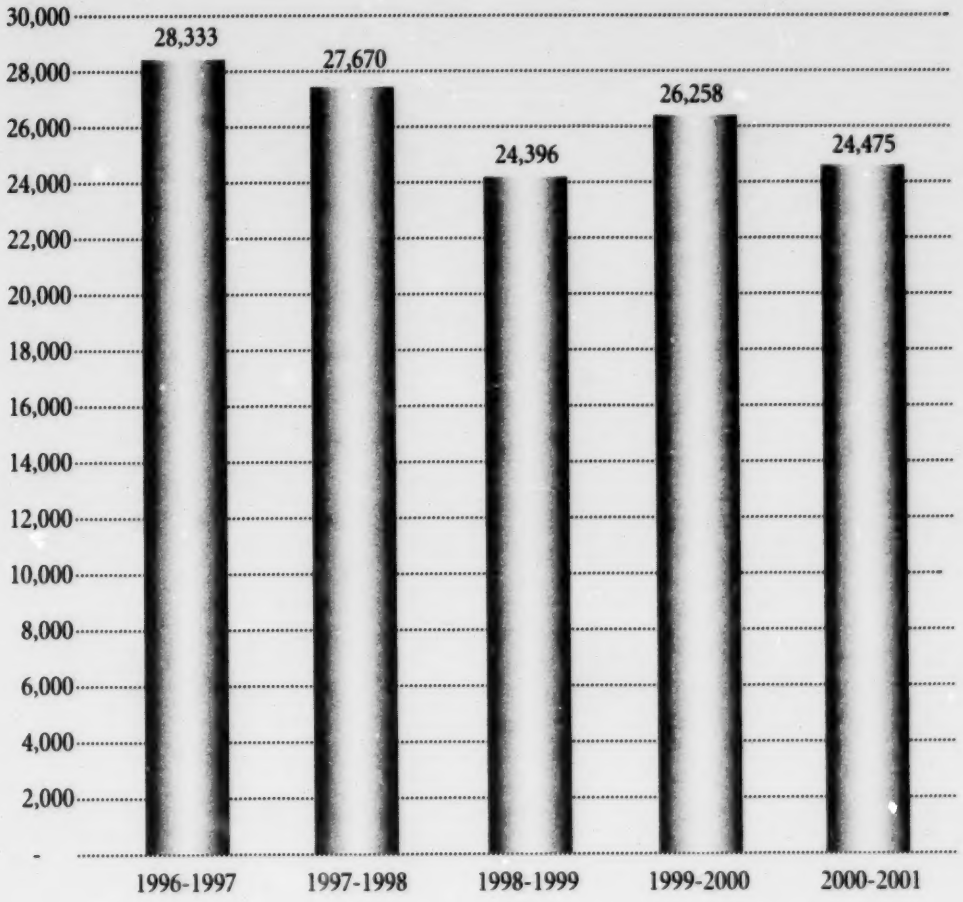


TABLE 1

ORIGIN OF REQUESTS IN 1999-2000 AND 2000-2001[1]

Region	Population[1]		1999-2000		2000-2001	
	No	%	No	%	No	%
Abitibi–Témiscamingue (08)	156,039	2.1	451	1.7	479	2.0
Bas-Saint-Laurent (01)	206,591	2.8	795	3.0	731	3.0
Centre-du-Québec (17)	222,091	3.0	431	1.6	469	1.9
Chaudière–Appalaches (12)	390,131	5.3	1,006	3.8	960	3.9
Côte-Nord (09)	103,735	1.4	353	1.3	296	1.2
Estrie (05)	288,599	3.9	969	3.7	844	3.4
Gaspésie–Îles-de-la-Madeleine (11)	103,799	1.4	340	1.3	331	1.4
Lanaudière (14)	396,656	5.4	1,081	4.1	1,017	4.2
Laurentides (15)	463,091	6.3	1,714	6.5	1,619	6.6
Laval (13)	346,539	4.7	901	3.4	754	3.1
Mauricie (04)	264,251	3.6	1,132	4.3	915	3.7
Montérégie (16)	1,311,493	17.9	3,160	12.0	2,994	12.2
Montréal (06)	1,799,448	24.5	7,664	29.2	7,259	29.7
Nord-du-Québec (10)	39,304	0.5	41	0.2	29	0.1
Outaouais (07)	318,771	4.3	741	2.8	682	2.8
Québec (03)	645,156	8.8	4,527	17.2	4,238	17.3
Saguenay–Lac-Saint-Jean (02)	289,696	3.9	784	3.0	638	2.6
Extérieur du Québec	...	...	119	0.5	141	0.6
Inconnue	...	...	49	0.2	79	0.3
Total	**7,345,390**		**26,258**		**24,475**	

TABLE 2

DEPARTMENTS AND AGENCIES MOST OFTEN ADDRESSED BY REQUESTS RECEIVED IN 1999-2000 AND 2000-2001[1]

	1999-2000	2000-2001
Ministère de la Sécurité publique	3,776	3,589
Ministère de l'Emploi et de la Solidarité sociale	3,817	2,624
Ministère du Revenu	2,382	1,791
Commission de la santé et de la sécurité du travail	1,271	982
Société de l'assurance automobile du Québec	883	757
Ministère de l'Éducation	650	556
Régie des rentes du Québec	398	392
Curateur public	253	245
Ministère de l'Industrie et du Commerce	5	222
Régie de l'assurance maladie du Québec	206	171
Ministère de la Justice	193	153
Ministère des Relations avec les citoyens et de l'Immigration	107	122
Régie du logement	123	122
Commission des lésions professionnelles	127	105
Ministère de la Famille et de l'Enfance	62	92
Commission administrative des régimes de retraite et d'assurances	65	72
Commission des normes du travail	84	71
Ministère de la Santé et des Services sociaux	83	67
Tribunal administratif du Québec	72	53

1. Departments and agencies for which more than 50 requests were received in 2000-2001.

TABLE 3

REQUESTS FOR INFORMATION BY SUBJECT AREA IN 2000-2001

	No	%
Government of Québec departments and agencies	1,221	37
Government organizations not under the jurisdiction of the Québec Ombudsman	231	7
School system	26	1
Health and social services network	158	5
Municipalities	78	2
Federal departments and agencies, and those of other provinces	141	4
Private sector	1,435	43
Other	18	1
Total	**3,308**	

TABLE 4

GROUNDS FOR REJECTING INTERVENTION REQUESTS IN 2000-2001

	No	%
Government organizations not under the jurisdiction of the Québec Ombudsman	814	7
School system	200	2
Health and social services network	1,779	10
Municipalities	591	5
Federal departments and agencies, and those of other provinces	840	7
Private sector	5,715	47
Politicians and judges	343	3
Other adequate resources available	714	6
Interventions deemed unnecessary	1,453	12
Other	131	1
Total	**11,980**	

TABLE 5

SERVICE TIMES IN 2000-2001

	No	%
Requests		
The same day	3,011	91
Within a week	3,202	97
Total	**3,308**	
Complaints Refused		
The same day	10,795	78
Within a week	11,727	96
Within a month	11,912	99
Within three months	11,952	99
Total	**11,980**	
Complaints Referred	**1,623**	...
Investigations Interrupted and Complaints Withdraw by Citizens	**1,314**	...
Investigations Completed		
Within a week	3,924	62
Within a month	4,847	77
Within three months	5,516	88
Within six months	5,863	93
Total	**6,281**	
Grand Total	**24,506**	

TABLE 6

DEPARTMENTS AND AGENCIES TARGETED BY REQUESTS PROCESSED IN 2000-2001

	Unsubstantiated Complaints	Substantiated Complaints	Other[1]	Total
Departments				
Assemblée nationale	1	1	-	2
Conseil du trésor (Secrétariat du)	1	2	13	16
Ministère de l' Agriculture, des Pêcheries et de l'Alimentation	11	4	5	20
Ministère de l' Éducation	235	91	201	527
Ministère de l'Emploi et de la Solidarité sociale	1,226	78	1,438	2,742
Ministère de l'Environnement	8	2	31	41
Ministère de l'Industrie et du Commerce	55	58	81	194
Ministère de la Culture et des Communications	1	2	3	6
Ministère de la Famille et de l'Enfance	13	13	52	78
Ministère de la Justice	55	12	87	154
Ministère de la Santé et des Services sociaux	13	9	35	57
Ministère de la Sécurité publique	1,097	698	1,802	3,597
Ministère des Affaires municipales et de la Métropole	18	-	14	32
Ministère des Finances	6	1	2	9
Ministère des Régions	1	-	1	2
Ministère des Relations avec les citoyens et de l'Immigration	25	10	87	122
Ministère des Relations internationales	-	-	2	2
Ministère des Ressources naturelles	6	5	28	39
Ministère des Transports	17	2	30	49
Ministère du Conseil exécutif	-	-	1	1
Ministère du Revenu	655	352	748	1,755
Ministère du Travail	6	-	7	13
Committees				
Comité de déontologie policière	1	-	1	2
Commissioners				
Commissaire à la déontologie policière	18	-	11	29
Boards (Commissions)				
Commission administrative des régimes de retraite et d'assurances	34	17	23	74
Commission d'accès à l'information	11	2	17	30
Commission de l'équité salariale	-	-	1	1
Commission de la fonction publique	8	-	6	14
Commission de la santé et de la sécurité du travail	147	118	730	995
Commission de protection du territoire agricole	2	-	8	10
Commission des lésions professionnelles	3	2	100	105
Commission des normes du travail	36	8	26	70
Commission des transports du Québec	2	-	-	2

1. Requests for information, rejected requests for intervention, referred requests for intervention, suspended interventions and intervention requests withdraw by citizens.

TABLE 6 (continued)

DEPARTMENTS AND AGENCIES TARGETED BY REQUESTS PROCESSED IN 2000-2001

	Unsubstantiated Complaints	Substantiated Complaints	Other[1]	Total
Boards (Commissions)				
Commission des valeurs mobilières du Québec	3	-	3	6
Commission municipale du Québec	1	-	-	1
Commission des libérations conditionnelles	12	4	20	36
Councils				
Conseil de la magistrature	2	-	1	3
Conseil supérieur de l'éducation	-	1	-	1
Institutions				
Curateur public	121	72	61	254
Inspecteur général des institutions financières	7	1	4	12
Institution de la statistique du Québec	1	-	1	2
Offices				
Office de la langue française	1	2	2	5
Office de la protection du consommateur	6	3	11	20
Office des personnes handicapées du Québec	1	-	1	2
Office des professions du Québec	4	-	2	6
Boards (Regies)				
Régie de l'assurance maladie du Québec	104	38	31	173
Régie des alcools, des courses et des jeux	6	2	2	10
Régie des assurances agricoles du Québec	4	2	-	6
Régie des marchés agricoles et alimentaires du Québec	3	-	1	4
Régie des rentes du Québec	153	37	185	375
Régie du bâtiment du Québec	21	2	10	33
Régie du cinéma	-	-	2	2
Régie du logement	34	4	83	121
Corporations				
Société d'habitation du Québec	6	2	22	30
Société de financement agricole	4	3	1	8
Société de l'assurance automobile du Québec	284	117	364	765
Société de la faune et des parcs du Québec	-	1	19	20
Tribunals				
Tribunal administratif du Québec	7	1	47	55
Tribunal du travail	1	-	1	2
Other[2]	4	-	1	5
Total	**4,502**	**1,779**	**6,466**	**12,747**

1. Requests for information, rejected requests for intervention, referred requests for intervention, suspended interventions and intervention requests withdraw by citizens.
2. Requests that cannot be linked to any department or agency.

FIGURE 2

MAIN DEPARTMENTS AND AGENCIES TARGETED BY REQUESTS PROCESSED IN 2000-2001

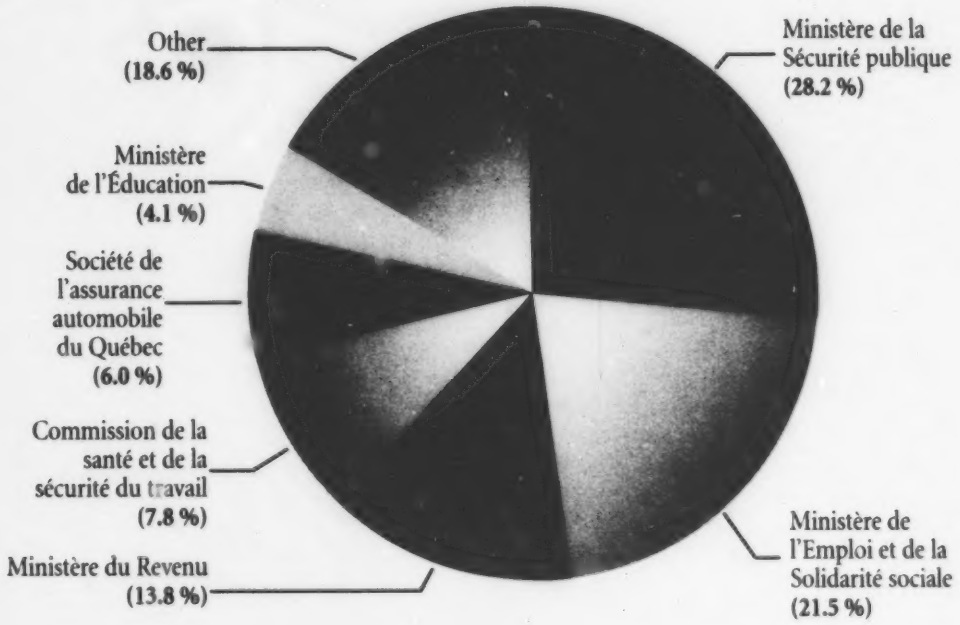


TABLE 7

CAUSES OF COMPLAINTS IN 2000-2001

	2000-2001	
	No	%
Abuse of power	12	1
Unreasonable or unfair actions	220	12
Actions not in compliance with laws, regulations or guidelines	193	11
Reprehensible behaviour or attitude	24	1
Unreasonable delays	516	29
Factual errors	75	4
Services not available	218	12
Inconsistencies	36	2
Inadequate information	79	5
Negligence or inaction	193	11
Other	213	12
Total	**1,779**	

TABLE 8

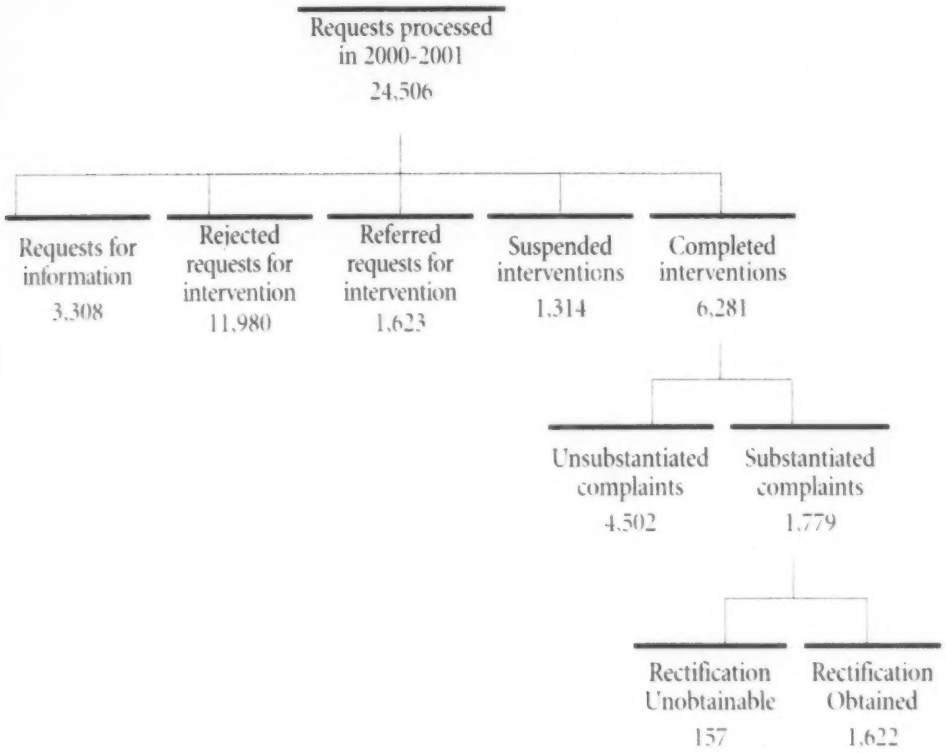
SUBSTANTIATED COMPLAINTS IN 2000-2001[1]

	Completed interventions	Substantiated complaints	Rate of substantiated complaints
	No	No	%
Ministère de l'Industrie et du Commerce	113	58	51
Ministère de la Famille et de l'Enfance	26	13	50
Commission de la santé et de la sécurité du travail	265	118	45
Ministère de la Santé et des Services sociaux	22	9	41
Ministère de la Sécurité publique	1,795	698	39
Curateur public	193	72	37
Ministère du Revenu	1,007	352	35
Commission administrative des régimes de retraite et d'assurances	51	17	33
Société de l'assurance automobile du Québec	401	117	29
Ministère des Relations avec les citoyens et de l'Immigration	35	10	29
Ministère de l'Éducation	326	91	28
Régie de l'assurance maladie du Québec	142	37	26
Régie des rentes du Québec	190	37	19
Commission des normes du travail	44	8	18
Ministère de la Justice	67	12	18
Régie du logement	38	4	11
Régie du bâtiment du Québec	23	2	9
Ministère de l'Emploi et de la Solidarité sociale	1,304	78	6

1. Departments and agencies which were targeted of at least 20 complaints.

FIGURE 3

REQUESTS PROCESSED IN 2000-2001: RESULTS[1]



1 Including requests received before April 1, 2000

APPENDIX

REVIEW OF BILLS AND REGULATIONS

During the year 2000–2001:

Fifteen draft regulations were analyzed.

The Québec Ombudsman addressed comments to the administrator responsible for the following draft regulation:

1. Regulation respecting lump-sum compensation for non-pecuniary damage.

Two draft bills and 24 bills were analyzed.

Two briefs were sent to parliamentary committee concerning:

1. Draft Bill. An Act respecting the legal normalization of new information technologies;
2. An Act to amend the Act respecting Access to documents held by public bodies and the Protection of personal information, the Act respecting the protection of personal information in the private sector, the Professional Code and other legislative provisions.

The Québec Ombudsman addressed comments to the Minister responsible for draft legislation in the following four cases:

1. An Act to provide for balanced budgets in the pubic health and social services network;
2. An Act to establish a national identification card;
3. An Act respecting parental insurance;
4. An Act to establish a legal framework for information technology.

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